

CITY OF BOULDER, COLORADO

Finance Department/Purchasing Division
1777 Broadway
P.O. BOX 791
Boulder, Colorado 80306



Phone No.: 303- 441-3054
Fax No.: 303- 441-4381
Email: greyc@bouldercolorado.gov

BID NO. 06-2010

BID OPENING: 3:00 PM, WEDNESDAY, APRIL 14, 2010

**MANDATORY PRE-BID CONFERENCE: 10:00 AM,
THURSDAY, MARCH 25, 2010**

**SPECIFICATIONS,
PROPOSAL, CONTRACTS AND BONDS
FOR THE CITY OF BOULDER
FOR**

VALMONT CITY PARK – PHASE 1

FOR ADDITIONAL INFORMATION CALL:

Parks & Recreation
Michael Lamb, Project Manager
TELEPHONE NO. 303-413-7225
lambm@bouldercolorado.gov

CITY OF BOULDER, COLORADO

CONSTRUCTION CONTRACT

**GENERAL CONDITIONS
July 2006**

GENERAL CONDITIONS

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ARTICLE I. DEFINITIONS AND INTRODUCTORY PROVISIONS

101. USE OF THIS DOCUMENT

These general contract conditions consist of requirements concerning the construction contracts of the city. They are applicable to all contracts of the city in which reference is made to “city of Boulder General Conditions.”

102. CONTRACT

The “contract” is the entire agreement between the contractor and the city and includes, without limitation, these general conditions and other contract documents in their entirety. The term is used generally and does not refer to any particular document.

103. CONTRACT DOCUMENTS

The “contract documents” are all written documents which define the construction work and the obligations of the contractor in performing the work and the city in providing compensation for the work. The contract documents include the following:

- A. General conditions (this document);
- B. Special conditions;
- C. Bid documents;
- D. Contract agreement (Form 5);
- E. Drawings and specifications;
- F. Payment and performance bonds; and
- G. Change orders, work directives, field orders, addenda and other documents which may be required or specified. When a form number is referenced herein, it refers to the forms provided in the Appendix to this document, these are the city’s preferred forms, but similar forms may be used at the discretion of the project manager.

104. GENERAL CONDITIONS

The “general conditions” are the sections set forth in articles 1 through 10 herein.

105. SPECIAL CONDITIONS

The special conditions are additions and revisions to the general conditions which refer to aspects of particular contracts. In the event that there are inconsistencies between the general conditions and the special conditions of a particular contract, special conditions supersede general conditions.

106. BID DOCUMENTS

The “bid documents” include the bidding instructions, and inform contractors of the bidding procedures of a particular contract. The bid proposal is the document upon which the contractor submits a bid, the bid bond, and any addenda to any of the other contract documents which are effective prior to submission of the bid proposal and the advertisement for bids.

107. DRAWINGS AND SPECIFICATIONS

The “drawings and specifications” consist of all documents, excluding shop drawings, approved by the city for the purpose of describing the work to be performed under the contract. The city shall retain ownership of all drawings and specifications prepared or used in connection with the contract, whether prepared by or on behalf of the contractor or the city. Copies of the drawings and specifications may be obtained at the location specified in the advertisement for bids. The drawings show the character and the scope of the work to be performed. Figure dimensions shall in all cases be used in preference to scale dimensions. The specifications consist of written technical descriptions of materials, equipment, construction systems, processes, standards, and workmanship. If work is shown on drawings, but dimensions for such work are not indicated, then the contractor shall not execute such work unless the contractor is able to determine the unspecified dimensions from the dimensions which are specified. Whenever the contractor is unable to determine unspecified dimensions, the contractor shall proceed as provided in section 120.

108. OWNERSHIP OF UNIQUE DRAWINGS AND SPECIFICATIONS

The city may hire an artist, architect, or engineer to prepare drawings or specifications for a unique design, logo, or structure, as will be set forth in the special conditions. The city hereby reserves complete property rights to such drawings and specifications. This section is not intended to include common drawings or specifications or manufacturer’s specifications which are commonly used in the construction industry, or which are used by the artist, architect, or engineer who prepared such drawings or specifications. The contractor and all subcontractors are prohibited from using such drawings or specifications or selling or otherwise transferring such drawings or specifications to any other person or entity, except as required for the work, unless the project manager waives this condition in writing.

109. PARTIES TO THE CONTRACT

There are only two parties to the contract: the city and the contractor.

110. THE CITY

The City of Boulder, Colorado, shall be referred to in these documents as the “city.” As used herein, the city also refers to each city department, division or other agency, board or commission or project manager set forth in the contract documents as having some responsibility for supervising the implementation of the contract.

111. PROJECT MANAGER

The city shall designate a “project manager” to be responsible for supervising the implementation of the contract and to represent the city in all matters and questions arising under the contract. The

project manager shall be the judge of the performance of the contract as it relates to compliance with drawings and specifications and other contract documents, quality of workmanship and materials and implementation of the contract according to its letter and intent. The project manager shall have full access to the work at all times. The project manager alone shall have the authority to issue change orders. All correspondence to the city relating to the contract shall be directed to the project manager. The project manager's duties are defined further in other sections of the general conditions. The project manager's decisions on all matters of the contract shall be final and conclusive, subject to contractor's right to dispute such decision.

112. PROJECT INSPECTOR

The "project inspector" is an employee of the city or of the A/E (defined below). The city has delegated its authority to the project inspector to make initial decisions regarding technical questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work under the contract. The project inspector shall interpret the intent and meaning of the contract, including drawings and specifications, and make initial decisions with respect to quality, workmanship and materials and the contractor's fulfillment of the contract and the contractor's entitlement to compensation. The contractor shall consult with the project inspector in all matters relating to the contract where any questions arise regarding technical aspects of the contract. The project inspector's decisions are subject to review by the project manager.

113. THE ARCHITECT/ENGINEER

The city may contract for the services of an architect or engineer, referred to as an "A/E," to aid the project manager in administering the contract. The A/E will consult with the project manager concerning the performance and acceptance of the work. The A/E will participate in the preparation and approval of progress and final payment estimates, and participate in inspections while the work is in progress and prior to final acceptance by the city.

114. THE CONTRACTOR

The word "contractor" as used herein refers to the person, partnership, corporation or joint venture which has contracted with the city to perform the work specified by the contract documents. The term "contractor" shall also be deemed to include any subsidiaries which are at least 80% owned by the contractor. The contractor shall supervise and direct the work, using the contractor's best skill and attention. The contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under the contract, and shall perform all the work in a workmanlike manner. The contractor shall be responsible to the city for all acts and omissions of the contractor's agents and employees, subcontractors and their agents and employees, and other persons performing any of the work under contract with the contractor or any of its agents, employees, or subcontractors. The contractor shall not be relieved from any obligations under the contract documents by inspections, tests, or approvals required or performed pursuant to the contract by persons other than the contractor.

115. SUBCONTRACTORS

The contractor shall list on its bid proposal any proposed subcontractor or supplier (other than employees) whom the contractor plans to hire to perform the work on the bid proposal. By executing the contract with the contractor, the city agrees to approve such subcontractors and suppliers, unless the city has a reasonable objection to any such subcontractor or supplier, and so notifies the contractor in writing within a reasonable time of discovering such objection. If the city has a reasonable objection to any such proposed subcontractor or supplier, the contractor shall propose a substitute to whom the city has no reasonable objection. If the contractor plans to hire any subcontractor or supplier not listed on the bid proposal, the project manager must give written approval before such subcontractor or supplier may perform any work or supply any materials under the contract. No agreement between the contractor and a subcontractor or supplier shall in any way affect the contract between the city and the contractor. The contractor shall review the qualifications of all subcontractors and their supervisors and assure that all subcontractors satisfy all applicable insurance requirements set forth in article 3 herein. The contractor shall require each subcontractor to sign an agreement in which the subcontractor agrees to be bound by all applicable terms and conditions of the contract documents for the benefit of the city. The contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that the contractor is responsible for the acts and omissions of persons directly employed by the contractor. Nothing in the contract documents nor in the city's acceptance of a subcontractor shall create any contractual relationship between the city and any subcontractor or other person or organization having a direct contract with the contractor, nor shall it create any obligation on the part of the city to pay or to see to the payment of any moneys due any subcontractor or other person or organization.

116. THIRD PARTY BENEFICIARIES

The contract is not intended to create any right in or for the public or any member thereof, any subcontractor or supplier, nor any other third party, nor to authorize anyone not a party to the contract to maintain a suit to enforce its terms. The duties, obligations, and responsibilities of the parties to the contract, with respect to third parties, shall remain as imposed by law. This section shall not apply to any surety to the extent it is acting under any labor and materials bond or performance bond entered into by the contractor.

117. INTEGRATION

The contract documents represent the entire integrated agreement between the city and the contractor and supersede all prior negotiations, representations, or agreements, whether written or oral. No modification, amendment, waiver or novation shall be valid unless incorporated in a written amendment or change order signed by both the project manager and the contractor.

118. SEVERABILITY

To the extent that the performance of the parties' obligations may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision of the contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract term or provision.

119. WAIVER

If the city fails to enforce any term of the contract for any period, this shall not act as a waiver. No waiver of any breach of any term hereof shall be effective unless set forth in a writing signed by both the project manager and the contractor. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.

120. INCONSISTENCIES IN CONTRACT DOCUMENTS

The contract documents are complementary, and what is called for by one document is binding as if called for by all contract documents. If the contractor notices a conflict, error or discrepancy in the contract documents, the contractor shall notify the project manager in writing immediately. The contractor shall not proceed with any part of the work affected by such conflict, error or discrepancy until the project manager has authorized the contractor to proceed in writing. The city shall decide which of the provisions in the contract documents shall be followed in the event of a conflict, error or discrepancy. If the city selects an interpretation which costs more or less than a version on which the contractor reasonably relied in preparing its bid, the contract price shall be increased or decreased by an appropriate change order. The adjustment in the contract price shall be calculated according to the provisions of article 8 herein, except that increases shall be granted only to the extent that the project manager finds that the contractor's interpretation which formed the basis of its bid was reasonable. If the contractor disputes the contract price adjustment made by the project manager, the contractor may appeal pursuant to section 25. The contractor shall report to the project manager all errors the contractor discovers in the contract documents. The contractor shall not be liable for damages resulting from conflicts, errors, or discrepancies in the contract unless the contractor caused the conflict, error, or discrepancy or if the contractor knew in the exercise of reasonable diligence of the conflict, error or discrepancy and failed to call it to the city's attention.

121. COMPLIANCE WITH LAWS

At all times during the performance of the contract, the contractor shall strictly adhere to all applicable federal, state, county and city laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Health, Occupational Safety and Health Administration (OSHA) standards. As used in this section, and hereafter, the term "laws" shall include, without limitation, all federal, state and city codes, charters, ordinances, laws, standards, rules, regulations and permits.

122. CHOICE OF LAW

In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, unless federal funds are expended on the contract and governing federal requirements specify that federal law must prevail. Unless federal law governs, venue shall be in the District Court in and for Boulder County, State of Colorado.

123. FEDERAL AID PROVISIONS

Whenever federal funds are used on the work, the special conditions shall set forth the federal funding provisions. In such event the rules and regulations promulgated by the federal department or agency disbursing the funds shall be among the terms and conditions of the contract and shall be

observed by the contractor, and shall be taken into account by the contractor in preparing and submitting its bid proposal. In the event of an inconsistency between the contract documents and federal aid requirements, the latter shall govern. When the United States of America provides funds, it may assign inspectors to insure that the purposes for which the funds were provided are achieved. However, such activity by the United States does not make it a party to the contract and shall not modify the rights or obligations of either the city or the contractor hereunder.

124. PAYMENT OF INTEREST

In the event that any payment of interest is to be made pursuant to any provision of the contract, interest shall be paid at the average rate earned by the city on its invested funds during the quarterly fiscal period prior to the period during which the interest was accrued.

125. CONTRACT GRIEVANCE APPEAL PROCEDURE

If the contractor disputes any decision made by the project manager, the contractor may appeal such decision informally to the city manager. If the city manager denies such appeal, or does not respond to the appeal within fifteen (15) days after receiving it, the contractor shall be required to submit a formal notice of intent to claim pursuant to section 809.

126. CITY AFFIRMATIVE ACTION REQUIREMENTS

Pursuant to Section 2-1-10, B.R.C. 1981, the contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender variance, marital status, religion, ancestry, mental or physical handicap, or age, except when sex or age or absence of mental or physical handicap is a bona fide occupational qualification, and, in the instance of a handicap, no reasonable accommodation can be made. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to the above mentioned characteristics. Such action shall include, without limitation, the following: employment, upgrading, demotion, transfer, recruitment and recruitment advertising, lay-off and termination, rate of pay and other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places on the work site notices setting forth this non-discrimination clause. In the event of the contractor's non-compliance with the foregoing non-discrimination clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for future city contracts.

127. ATTORNEYS' FEES

If the City is reasonably required to engage an attorney to assist it in connection with any claim, dispute, or other disagreement with the contractor, including without limitation engagement in connection with any litigation or arbitration proceedings under this contract, and the city substantially prevails in such proceeding, the contractor shall reimburse the city for its reasonable attorneys' fees, costs, and other expenses including without limitation the expenses of consultants and other experts, incurred by the city in such proceedings. Reimbursement of attorneys' fees shall be at the prevailing rate within the city for services rendered by the city attorney and employees of the city who assist the office of the city attorney in such proceedings.

128. AUTHORITY

Contractor warrants that the individual executing this contract is property authorized to bind the contractor to the terms of this contract.

ARTICLE II. BIDDING INSTRUCTIONS

201. GENERAL INSTRUCTIONS

These bidding instructions are general in nature, and may be amended or supplemented by the city. Upon submitting a bid proposal, the bidder warrants that it is familiar with all provisions of the contract documents, and agrees to comply with them. Bidding procedures shall at all times conform to the requirements of Chapter 2-8, B.R.C. 1981, as amended.

202. ADVERTISEMENT FOR BIDS

The city manager shall publish a notice of call for bids at least once in a newspaper of general circulation in the city when required by Section 2-8-4, B.R.C. 1981, as amended. The city manager may notify any contractor deemed particularly well suited to perform the particular tasks in a proposed contract.

203. LEGAL QUALIFICATIONS OF BIDDERS

Each bidder shall sign the bid proposal and give the bidder's current business address. The legal status of the bidder shall be stated in the proposal. A corporation shall name the state in which it is incorporated, shall be qualified to do business in the State of Colorado, and shall so state. When a corporation submits a proposal, the proposal shall be signed in the name of the corporation by a duly authorized officer or agent of the corporation, who shall submit a personal address together with evidence that such person has legal authority to sign the proposal. A partnership shall give the full names and addresses of all partners and their interest and role in the partnership business. When a partnership submits a proposal, the proposal shall be signed in the name of the partnership by a duly authorized general partner or agent thereof, who shall submit a personal address together with evidence that such person has legal authority to sign the proposal. If the bidder signs a bid proposal using the designation "President," "Secretary," "Agent," or other designation without disclosing the name of a bidding contractor, the person signing the bid proposal may be held individually responsible for the bid. If required, the bidder shall furnish the city with a completed copy of Form 2, Contractor/Subcontractor Qualification, at the time and place set forth in the bidding instructions.

204. LICENSES AND PERMITS

Neither the contractor nor any subcontractor shall commence work under this contract in the city until obtaining all required city licenses and permits. The following is a list of licenses and permits which may be required; (the regulations can be accessed via the city's website at www.bouldercolorado.gov). These requirements are subject to change without notice. This list should not be deemed to be exhaustive. In addition, the contractor is responsible for obtaining all required federal, state, and county licenses and permits. The city will pay the development excise tax and any plant investment fees applicable to the project.

<u>License or Permit</u>	<u>B.R.C. 1981</u>	<u>Location</u>
General Contractor's License	4-4-3	Planning and Development Services Phone:303-441-1880
Building Permit	10-5-2	Same
Solar Access Permit	9-8-7	Same
Plumbing Contractor's License	4-15-3	Same
Plumbing Permit	10-10-2	Same
Electrical Contractor's Registration	4-8-2	
Electrical Permit	10-6-2	Same
Mechanical Contractor's License	4-13-3	Same
Mechanical Permit	10-9-2	Same
Sound Level Variance	5-6-2	
Sign Contractor's License	4-21-2	Same
Sign Permit	10-11-4	Same
Moving or Wrecking Permit	10-5-2	Same
Fire Protection System Permit	10-8-2	Same
Fence Permit	10-5-2	Same
Public Right-of-Way License	4-6-2	Same
Public Right-of-way Excavation Permit	4-6-9	Same

Water Main Connection Permit	11-1-14	Same
Sewer Main Connection Permit	11-2-9	Same
Industrial Discharge Permit	4-20-31, 11-3-13	Water Quality Phone: 303-413-7350
Sales and Use Tax License	3-2-11	Sales & Use Tax Division Phone: 303-441-3050

205. LOCATION OF BIDDING DOCUMENTS/ADDENDA

Drawings, specifications and other contract documents and addenda are located at the office described in the advertisement for bids. As used herein, addenda include all written or graphic instruments issued by the city prior to the deadline for submission of bids which modify or interpret the contract documents, drawings or specifications by additions, deletions, clarifications, or corrections. Any potential bidder may request in writing to have copies of all addenda sent to the bidder's address. However, the city shall not be liable for any failure to send or to receive such addenda. No addenda shall be issued less than five (5) working days prior to the deadline for submission of bids. If necessary, the deadline for submission of bids shall be extended to comply with this section.

206. OMISSIONS IN DRAWINGS AND SPECIFICATIONS

Drawings and specifications are intended to be complementary, and must be interpreted in that sense. Anything shown or called for in one and omitted in another is binding as if called for or shown by both. The provisions of section 120 shall apply to any inconsistency between drawings, between specifications, and between drawings and specifications. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The corrected total will be shown in the tabulation of bids. Special provisions and detail drawings are intended to modify and shall supersede more general drawings and specifications. If work is not described by the drawings and specifications, but is within the reasonable scope of the work, the bidder shall incorporate into the bid proposal such extra work. As used herein, work which is not specifically described in the drawings and specifications but which is within the reasonable scope of the work is work which is necessary for the successful performance of the contract, the necessity of which can be reasonably implied from the contract documents. Failure to notice or acknowledge such work shall not excuse the bidder nor allow a claim for extra payment or time extension in the event that the bidder is awarded the contract. The contractor shall have the burden to prove that such work could not have been reasonably implied from the contract documents.

The City will furnish the contractor, upon award of the contract for construction, five (5) sets of contract documents at no charge. Additional contract documents are available for the City's cost of reproduction.

Order of Precedence of Contract Documents:

- A. To resolve conflicts resulting from errors or discrepancies in the contract documents, the order of precedence shall be as follows:
 - 1. Change Orders
 - 2. Addenda
 - 3. The Contract Agreement
 - 4. Permitting or Licensing Conditions as interpreted by the Permitting or Licensing Authority
 - 5. Special Contract Conditions and Provisions
 - 6. Drawings
 - 7. Technical Specifications
 - 8. General Contract Conditions
 - 9. Referenced Standard Specifications
 - 10. Instructions to Bidders
 - 11. Advertisement for Bids
 - 12. Contractor's Bid (Bid Proposal Form)

- B. With reference to the Drawings, the order of precedence shall be as follows:
 - 1. Figures govern over scaled dimensions
 - 2. Detail drawings govern over general drawings
 - 3. Addenda/change order drawings govern over Contract Drawings
 - 4. Contract Drawings govern over standard drawings.

207. STANDARDS

Reference to standard specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard code, specification, or tentative specification adopted and published at the deadline for the submission of bids, unless specifically stated otherwise. Wherever the following abbreviations are used, they are to be given the meaning which follows the abbreviation:

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AI	Asphalt Institute
AGC	Associated General Contractors
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALS	American Lumber Standards

ANSI	American National Standards Institute (successor to USASI)
APA	American Plywood Association
APWA	American Public Works Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
AWI	American Woodworkers Institute
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builders Hardware Manufacturers Association
CDOT	Colorado Department of Highway
CDH	Colorado Division of Health
CLFMA	Chain Link Fence Manufacturers Association
CRSI	Concrete Reinforcing Steel Institute
CSI	Construction Specification Institute
EPA	Environmental Protection Agency
FS	Federal Specifications
MUTCD	Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
NCMA	National Concrete Masonry Association
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NFPA	National Fireman's Protection Association
NRMCA	National Ready Mix Concrete Association
NWMA	National Wood Manufacturers Association
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
SDA	Steel Door Association
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
UBC	Uniform Building Code
UL	Underwriter's Laboratory
UMC	Uniform Mechanical Code
UPL	Uniform Plumbing Code
WCLB	West Coast Lumber Inspection Bureau
WPCF	Water Pollution Control Federation
WWPA	Western Wood Products Association

208. ROYALTIES AND PATENTS

The contractor shall pay all license fees and royalties. The contractor shall include and shall be considered to have included in the bid proposal a sum sufficient to cover all fees, royalties, licenses and claims for any patent rights, trade secrets, copyrights, trademarks or other intellectual property which may be connected with the work. If the contractor uses any such intellectual property in the work, the contractor shall enter into a written agreement with the owner of the intellectual property to provide that there will be no future payments owed by the city. The contractor shall defend,

indemnify, and hold harmless the city, its officers, agents and employees from all fees, royalties, licenses and claims or suits therefore in connection with any infringement or alleged infringement of any intellectual property right, unless the infringement or alleged infringement results from the negligence of the city or an A/E hired by the city in failing to ascertain that an infringement is or may be occurring, in which case the contractor shall defend any action against the city.

209. SITE INSPECTION

Before submitting a bid, each bidder shall:

- A. Examine the contract documents thoroughly;
- B. Visit the site to familiarize it with local conditions that may in any manner affect cost, progress, or performance of the work;
- C. Become familiar with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress or performance of the work;
- D. Study and carefully correlate the bidder's observations with the contract documents; and
- E. Notify the project manager of all conflicts, errors, omissions, ambiguities or discrepancies in or among the contract documents.

On request, the city will provide each bidder access to the site to conduct such investigations and tests as each bidder deems necessary for submission of a bid. It shall be the bidder's responsibility to make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (including without limitation, surface, subsurface and underground utilities) at or contiguous to the site or otherwise which may affect costs, progress or performance of the work and which the bidder deems necessary to determine its bid for performing the work in accordance with the time, price and other terms and conditions of the contract documents. Location of any excavation or boring made by bidder shall be subject to prior approval of the city and other applicable agencies. Bidder shall fill all holes, restore all pavements to match the existing structural section and shall clean up and restore the site to its former condition upon completion of such exploration. The city reserves the right to require the bidder to execute an access agreement with the city prior to accessing the site.

If a bidder discovers an apparent error or omission in the drawings and specification, or any other contract documents, the bidder shall immediately notify the project manager to enable the city to make any necessary revisions. The city may consider it to be detrimental to the city for a bidder to submit an obviously unbalanced unit bid price.

The lands upon which the work is performed, rights of way, and access thereto, and other lands designated for use by contractor in performing the work are identified on the drawings.

Information and data reflected in the contract documents with respect to underground utilities at or contiguous to the site are based upon information and data furnished to the city by the owners of

such underground utilities or others, and the city does not assume responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the contract documents.

By submission of a bid, the bidder shall be conclusively presumed to represent that the bidder has complied with every requirement of these instructions to bidders and that the contract documents are not ambiguous and are sufficient in scope and detail to indicate and convey understanding of all terms and requirements of the contract documents. By failing to make an inspection, the bidder waives all rights to claim extra payment or time extensions due to unexpected conditions which could have been determined had the site been inspected, *see* Section 802. Bidders may not rely on oral or written representations made by the city, unless the city has guaranteed in writing that such representation is factually accurate; and by submitting a bid, each bidder waives all liability for any error in any representation made by the city to the bidder.

210. EVALUATION OF BIDS AND BIDDERS; REJECTION OF BIDS

The city reserves the right (1) to reject any and all bids, (2) to waive any and all informalities or irregularities, (3) to negotiate final terms with the successful bidders and (4) to disregard all nonconforming, nonresponsive or conditional bids.

The city may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the work as to which the identity of subcontractors and other persons and organizations must be submitted. Operating costs, maintenance considerations, performance data, and guarantees of materials and equipment may also be considered by the city.

The bidder shall furnish the city all information and data requested by the city to determine the ability of the bidder to perform the work. The city reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the city that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

The city may conduct such investigation as deemed necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the bidders, proposed subcontractors and other persons and organizations to do the work in accordance with the contract documents to the city's satisfaction within the contract time.

By submitting a bid, each bidder authorizes the city to perform such investigations of the bidder and, by its signature thereon, authorizes the city to obtain reference information concerning the bidder and releases the city and the party providing such information to the city from any and all liability to the bidder as a result of such reference information so provided.

If the contract is to be awarded, it will be awarded to the bidder who, by evaluation, the city determines will best meet the city's interests.

The city reserves the right to accept or reject the work contained in any of the bid schedules or alternates, either in whole or in part.

211. DETOURS AND TRAFFIC CONTROL

When a street, alley, bikelane, path, or sidewalk detour or temporary transportation device must be constructed or maintained as part of the work, including without limitation traffic control supervision, the contractor shall include such costs in the bid.

212. THE BID PROPOSAL

The bid shall be submitted upon the proposal form supplied by the city. The general conditions, special conditions, bidding instructions and proposal, contract agreement, and specifications are bound in one volume, and this shall be submitted intact. Each proposal must be enclosed in a sealed envelope addressed to the purchasing agent. The face of the envelope must show the name of the bidder, the project number, the descriptive title of the work, for which the bid is made, and the time and date of opening. The bid proposal shall include the furnishing of all materials, plans, equipment, tools, and all other facilities and the performing of all labor and services necessary or proper for the completion of the work, except as may be provided otherwise in the contract documents. The contractor, by submittal of this bid proposal accepts the constructions drawings as referenced in the bid package.

213. COMPLETING AND SIGNING THE PROPOSAL FORM

The bidder shall complete the proposal form by writing or printing, in a legible fashion, the entire bidder's prices offered for the work to be done. All blank spaces which require a response of the bidder shall be properly filled in. If the words and figures on the proposal form do not agree, the written words will govern. Any alteration, interlineation, or erasure on the proposal form or other parts of the contract documents as originally issued to the bidder must be initialed by the signer of the bid. Proposals that are unbalanced so that each item does not reasonably carry its own proportion of cost and proposals which contain inadequate or unreasonable prices for any item also may be rejected. The bidder shall assume full responsibility for timely delivery at the location designated for the receipt of bids. Oral, telephonic, telegraphic, or telecopied bids are invalid and will not receive consideration.

214. DISCREPANCIES BETWEEN UNIT PRICES AND EXTENSIONS

In the event of discrepancies between the unit prices quoted in the proposal and the extensions thereof, the unit prices shall control. However, the city reserves the right to accept the extension price if that is deemed by the city to be a more accurate valuation for a particular bid item.

215. NO ORAL AGREEMENTS

No oral agreement or conversation with any officer, agent or employee of the city, either before or after the execution of the contract, shall affect or modify any of the terms, conditions, or other obligations set forth in any of the contract documents. All contract modifications must be in writing and signed by the authorized agent of the city who is in charge of the administration of this contract.

216. PREFERENCE FOR COLORADO MATERIALS

Except for federally funded contracts, preference is given to materials, supplies, and provisions produced, manufactured or grown in Colorado, quality being equal to articles offered by competitors outside the state of Colorado, pursuant to Section 8-18-101, C.R.S., as amended.

217. COLORADO LABOR REQUIREMENTS

Except for federally funded contracts, Colorado labor shall be employed for at least eighty percent (80%) of each class of skilled and common labor employed for all city public works projects. "Colorado labor" means any person who is a resident of the state of Colorado at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational criterion. Section 8-17-101, C.R.S., as amended.

218. CITY SALES AND USE TAX

The contractor is deemed to be the consumer of the materials used in all construction projects in Boulder. Therefore, all tangible personal property used in the construction project is subject to the current city sales or use tax pursuant to Section 3-2-2, B.R.C. 1981. The city sales tax is imposed on all sales, rentals, leases and taxable services used in the construction project. The city's construction use tax is imposed upon tangible personal property and taxable services purchased for construction use in the city whether purchased inside or outside of the city. Both non-residents and residents of the city engaged in a construction project in the city are liable to pay the city construction use tax. No credit will be given for taxes paid to another municipality. The General Contractor is liable for the payment of the city's sales and use tax for the total project including tax due by its subcontractors. This tax must be included in the bid proposal.

219. STATE SALES AND USE TAX

Pursuant to Section 39-26-114, C.R.S., all materials to be incorporated into city projects are exempt from the RTD and State of Colorado sales and use taxes. Bids shall exclude these taxes.

220. CHANGES IN THE CITY SALES AND USE TAX RATE

If the city sales and use tax rate is increased or decreased effective after the deadline for the submission of bids, an adjustment shall be made in the contract by the project manager to take account of any additional or reduced tax liability.

221. BID SHALL IDENTIFY WORK TO BE SUBCONTRACTED

In the special conditions, the city may designate the amount of work which it will permit the contractor to subcontract. This will be determined by considering the various construction trades required to do the work, the market conditions in the construction industry, and how the work can be organized to promote the city's best interests. The bid proposal shall identify each element of the work to be subcontracted, estimate the percentage of the total work which that element represents, and provide the name and qualifications of each proposed subcontractor. However, the city recognizes that prior to bidding, the bidder may not have been able to negotiate for all work which the bidder proposes to subcontract. Therefore, the city will permit the successful bidder to propose

additional subcontractors at any time during the contract period, as long as the limitation on subcontracting has not been exceeded. If any of the proposed subcontractors are rejected by the city after acceptance of the bid, the contractor shall replace them with substitute subcontractors acceptable to the city. If the city rejects a proposed subcontractor and the contractor, with the exercise of good faith and best efforts, is unable to employ an alternate acceptable subcontractor within the contract price, the contractor may request an increase in the contract price. If the contractor disputes the contract price increase granted by the city, the contractor may appeal pursuant to section 125.

222. PROPOSAL GUARANTEE

As a guarantee of good faith on the part of the bidder, each bid proposal shall be accompanied by an unconditional letter of credit, money order, certified check, or bid bond payable to the city in an amount not less than five percent (5%) of the total amount of the bid. The city shall only accept a bid bond if it is set forth on Form 1 from the bidder. No bid proposal will be considered unless accompanied by such a proposal guarantee. In case alternate bids are called for, providing for the use of several different classes of material or types of improvement for the same work, one bid bond in the amount of five percent (5%) of the total amount of the highest bid will be sufficient for all proposals.

223. RETURN OF PROPOSAL GUARANTEE

As soon as bid prices have been compared and determination of bidder responsibility has been made, the proposal guarantees of all except the three (3) lowest responsible bidders will be returned unless the city is considering the bids of more than three (3) bidders, in which case all such proposal guarantees may be retained. When the successful bidder executes and delivers the contract agreement and delivers to the city satisfactory performance and labor and material bonds and insurance documentation and all other contract documents, and satisfies all other conditions precedent to contract execution by the city, the proposal guarantees of these three (3) bidders shall be returned to them. In any event, the proposal guarantees of all bidders shall be returned within sixty-five (65) days of the bid opening, unless the city retains the proposal guarantee pursuant to section 224.

224. RETENTION OF PROPOSAL GUARANTEE

If the successful bidder fails to enter into a contract in accordance with an accepted bid proposal, or fails to furnish the required performance and labor and material bonds, insurance certificates, and other contract documents, within fifteen (15) days from the mailing of the notice of award, or if the bidder has engaged in collusion with other bidders in submitting the bid, the bidder's proposal guarantee shall be retained by the city as liquidated damages and not as a penalty. In the event only a portion of the bidder's bid is accepted or if the bidder refuses to accept an award of less than the combination of bids on two (2) or more designated portions of such bids, the city shall retain as liquidated damages a portion of the proposal guarantee equal to the proportion of the work which the bidder refused to perform bears to the total bid price of the contract accepted by the city. By submitting the proposal guarantee with the bid proposal, the bidder agrees to liquidated damages in the event the bidder fails to enter into the contract with the city. The city shall not have to prove actual damages suffered in order to retain the proposal guarantee as liquidated damages. The parties agree that liquidated damages are appropriate because the city's anticipated actual damages are

uncertain in amount and difficult to forecast accurately. The parties agree that the amount of the proposal guarantee or the specified portion thereof is a reasonable estimate of damages and not disproportionate to the anticipated loss or injury.

225. ONLY ONE PROPOSAL ACCEPTED

More than one bid proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered. Evidence that any bidder has an interest in more than one proposal for the same work will be cause for rejection of all such proposals. Evidence of collusion or other illegal activities between bidders will be considered sufficient cause for the rejection of all bids so affected. In addition to any other remedies the city may have, the city may retain as liquidated damages for the disruption of the bidding process the proposal guarantees of all bidders involved in collusion or other illegal activities. The parties agree that the amount of the proposal guarantee is a reasonable estimate of damages for collusion or other illegal or improper activities on the part of the bidder and is not disproportionate to the anticipated loss or injury. A person or entity which has quoted prices to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a direct bid on its own behalf.

226. ALTERNATE BIDS

Whenever alternate bids are called for, providing for use of more than one class of material or type of improvement for the same work, all bidders shall submit prices for each class of material or type of improvement specified, unless otherwise specified in the special conditions. The material to be used or the type of improvement to be adopted will be selected by the city after the bid proposals have been opened and read. The city has the right to accept alternate bids in any order or combination.

227. SUBSTITUTIONS

The materials, products, and equipment described in the bidding documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution. No substitution will be considered prior to receipt of bids unless written request for approval has been received by the project manager at least ten (10) working days prior to the date for receipt of bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cut sheets, performance, and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment, or other work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the proposer. The project manager's decision of approval or disapproval of a proposed substitution shall be final. If the project manager approves any proposed substitution prior to receipt of bids, such approval will be set forth in an addendum. Bidders shall not rely upon approvals made in any other manner. No substitutions will be considered after the contract award unless specifically provided in the contract documents.

228. WITHDRAWAL OF BID PROPOSALS

A bidder may withdraw a bid proposal at any time prior to the submission deadline. Any withdrawal request shall be signed in the same manner as and by the same person or persons who signed the bid proposal.

229. REJECTION OF BIDS

Upon request, bidders shall present satisfactory evidence that they are familiar with the type of work specified, and that they have the necessary capital, experienced personnel, tools, machinery, and other equipment necessary to conduct the work in a good and workmanlike manner. Upon request, bidders also shall satisfy the city that they can complete the work within the time specified in the special conditions and that they have conducted themselves in the past in a manner which assures their probity and trustworthiness. The city purchasing agent and the project manager will determine jointly the bid to be selected. The city, acting through its authorized representatives, retains the right to reject any and all bids and waive any informality or irregularity contained in the bids. Specifically, and without limiting the generality of the foregoing, the city may refuse to accept proposals from bidders or sureties in arrears to the city upon any tax debt or contract, or which are defaulters as surety or otherwise upon any obligation to the city. In the event that all bids are rejected or that a bid other than the lowest bid is selected, the bids received shall be referred to the city manager. In addition, the city may bar or suspend all bidders who participate in illegal bidding activities from bidding on future projects.

230. BIDDING UNDER A DESIGN-BUILD OPTION

A design-build option is a project in which the contractor accomplishes both the design and the construction of a public facility. If a design-build option is used, the project manager shall conduct a design review evaluation to determine the bid to be selected. Each bidder shall be given equal opportunity to present a design-build offer. This evaluation shall be recorded and competing bidders shall not be allowed to attend another bidder's evaluation. The lowest cost bid for a design-build project need not be selected if the design of a higher cost bid is deemed sufficiently superior to warrant the higher cost.

231. THE BID OPENING

Bidders are invited to be present at the bid opening. All bid proposals will be made available for examination by interested parties immediately following the bid opening unless the bidder specifically requests confidential treatment of specific identified confidential commercial data five days prior to the bid opening date. Such request for confidentiality shall be in writing, and the commercial data for which confidentiality is requested and the basis for the request shall be clearly identified. The city will comply with a bidder's request for confidentiality of commercial data only if the data consist of a formula, patent, device, plan or compilation of information which is used by the bidder and which gives the bidder an advantage over the bidder's competitors who do not already know or use it. The final bid price and the unit prices are not confidential and may not be included in any request for confidentiality.

232. MISTAKES IN BIDDING INSTRUCTIONS

If the city makes a mistake in drafting the bidding instructions or any other contract documents, the city reserves the right to reject any or all bids, or to require that bidders submit an alternate bid proposal with adjustments made to correct the error(s). Such error(s) will be set forth in an addendum. If a contractor has already been selected and has started performing work under the contract, and the city then discovers a mistake in the contract documents for which the city is responsible, the city may opt to reform the contract. If the mistake causes the contractor to receive compensation for materials not used in the work or for labor which would not be required for the work, the contract payment price shall be decreased proportionally. If the mistake causes the contractor to fail to bid on work which must be performed in order properly to complete the contract, the city may increase the contract payment price to equal the proportionate increase in the cost of required materials and labor caused to the contractor. In the alternative, the city may solicit bids for such additional work, or the city may reassign such additional work to another contractor, as the city deems appropriate. Nothing in this provision shall apply to mistakes made by the contractor in completing the bid proposal or in performing the contract.

ARTICLE III. INSURANCE AND BONDING REQUIREMENTS

301. NOTICE OF AWARD

The bidder whose bid proposal has been accepted by the city will be sent a Notice of Award (Form 4) in writing signed by the purchasing agent within forty-five (45) days of the bid opening. The city's acceptance of the bid proposal shall bind the successful bidder to sign the contract agreement (Form 5) within ten (10) days of the date of mailing of the notice of award or to be responsible for liquidated damages as provided in section 224. The city's rights and obligations set forth in the contract agreement shall become effective only with the signatures of the city officials set forth in section 302 on behalf of the city.

302. SIGNING THE CONTRACT AGREEMENT

The notice of award informs the successful bidder that the city is ready to enter into a contract. Once the bidder has been selected, the purchasing agent then will complete the contract agreement (Form 5) for the project and transmit four (4) copies of the agreement to the successful bidder for signing. The successful bidder shall sign, and have notarized, all four (4) copies of the contract agreement and return them to the purchasing agent along with the appropriate performance bond, labor and material bond, insurance certificates, and power of attorney authorizations. The purchasing agent will transmit the four (4) copies of the signed contract agreement to the city attorney, the city manager, and the finance director. After each official has signed all four (4) copies they shall be returned to the purchasing agent. When the contract agreement has been signed by the purchasing agent, city attorney, city manager, and finance director, the purchasing agent will issue a purchase order, which is the official notice to proceed. Copies of the purchase order and the contract agreement will be transmitted to the contractor, project manager, purchasing agent, and finance director. A copy of the purchase order and the contract agreement will be filed in the city central files.

303. LEGAL ADDRESS OF CONTRACTING PARTIES

All notices required to be given to the parties to this contract shall be mailed to the addresses of the project manager and the contractor, or the contractor's superintendent, as designated in the contract agreement (Form 5, Part Eight). The parties so designated or their addresses may be modified upon receipt of a written request by the other party.

304. BOND REQUIREMENTS

Unless otherwise specified in the special conditions, a performance bond and a labor and material bond shall be required for all contracts. The successful bidder shall furnish the performance and labor and material bonds in the full amount of the contract price within fifteen (15) days after the city has issued the notice of award. Both bonds shall be in the form set forth as Form 6 (performance bond) and Form 7 (labor and material payment bond). The bonds must be issued by a surety authorized by the State of Colorado to do business in Colorado and admitted in the State of Colorado with an A.M. best rating of A-VI or better and be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in circular 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department. If at any time a surety which issues a performance bond or a labor and material bond becomes insolvent or the subject of bankruptcy proceedings or loses its right to do business in Colorado, another surety shall be required, which the contractor shall obtain within five (5) days after receipt of any form of notice of such event. In the event that there is a conflict between the city-approved bond form and any other contract entered into between the contractor and the surety on either the performance or the labor and material payment bond, the conditions stipulated in the city-approved bond form shall control. The contractor shall also notify the city immediately if the surety becomes insolvent or the subject of bankruptcy proceedings or loses its right to do business in Colorado pursuant to section 1005. In the event that the contract price is increased due to a change order, the city reserves the right to require the contractor to procure additional performance and labor and material payment bonds to cover the increase in the contract price. The city shall reimburse the contractor for the increased cost of such additional bonds, which will be added to the contract price by an executed change order.

305. PERFORMANCE BOND

The contractor shall procure and pay for a performance bond (Form 6) which, when executed by the contractor and the surety, shall be a guarantee for the faithful performance and completion of the work in strict accordance with the terms of the contract. The performance bond shall also be a guarantee for the repair or replacement of all work found by the city to be defective or otherwise unacceptable during the contract performance time and through the guarantee period. *See* article 7. With regard to design/build contracts, unless otherwise specified, the performance bond shall guarantee the faithful performance and completion of all design work as well as construction. The performance bond shall stay in effect during the guarantee period set forth in section 701. The performance bond shall be in an amount of one hundred percent (100%) of the dollar value of the contract. The surety which executes the performance bond waives any right to independent notice under the contract if the contractor receives such notice, and consents to any extension of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the contract by the parties or by their successors or assigns. In the event that the guarantee period

for the contract is extended pursuant to section 717 past the original guarantee period, the contractor's performance bond shall cover automatically the extension of the guarantee period. If a product is used in the work and the product fails before the guarantee period (including extensions) has expired, the contractor must replace the defective product and guarantee the product during a new guarantee period for the same length of time as the original guarantee period, unless the defective product is the result of a design error caused by the city, or an architect, engineer, or project manager whom the city employed.

306. LABOR AND MATERIAL PAYMENT BOND

The contractor must procure and pay for a labor and material payment bond (Form 7) which guarantees that all those performing labor or furnishing materials, supplies, tools and equipment under the contract shall be paid. This bond shall be in the amount of one hundred percent (100%) of the dollar amount of the contract. The surety which executes the labor and material bond waives any right to independent notice under the contract if the contractor receives such notice, and consents to any extension of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the contract or by the parties or by their successors or assigns.

307. INSURANCE POLICIES

The contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the contractor pursuant to this section. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this section by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain and, if applicable, shall cause any subcontractor of the contractor to procure and maintain the insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the city. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the contractor pursuant to this section. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage

The Contractor shall obtain and maintain the minimum insurance coverages set forth below, unless specified otherwise in the special conditions. By requiring such minimum insurance, the city shall not be deemed or construed to have assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and / or prudent, maintain higher limits and / or broader coverages.

A. Insurance Coverages

1. **Commercial General Liability – ISO CG 00001 or equivalent. Coverage to include:**
 - Premises and Operations
 - Explosions, Collapse and Underground Hazards
 - Personal / Advertising Injury

- Products / Completed Operations
 - Liability assumed under an Insured Contract (including defense costs assumed under contract)
 - Broad Form Property Damage
 - Independent Contractors
 - Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
 - Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
 - Additional Insured—Owners, Lessees or Contractors Endorsement, Completed Operations, ISO CG 2037 (7/2004 Edition or equivalent)
2. **Automobile Liability including all:**
- Owned Vehicles
 - Non-Owned Vehicles
 - Hired Vehicles
3. **Excess/Umbrella Liability (applies to large construction projects):**
- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
 - Coverages should be as broad as primary.
 - The city reserves the right to require higher limits.
4. **Workers Compensation**
- Statutory Benefits (Coverage A)
 - Employers Liability (Coverage B)
5. **Installation Floater/Builder's Risk**
- Special cause of loss
 - Theft
 - Faulty workmanship
 - Vandalism
 - Labor costs to repair damaged work
6. **Contractors Pollution Liability/Environmental Impairment Liability**

This section applies to the following types of proposals, including but not limited to:

- ASBESTOS/LEAD ABATEMENT Contracting Services
- CORE DRILLINGS Contracting Services
- ROOFING Contracting Services
- GENERAL CONSTRUCTION CONTRACTORS
- BOILER REPAIRS & CLEANING
- GAS & ELECTRICAL TURBINES

The city requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor’s bid and specifications. Policy shall cover the Contractors completed operations. Such coverage shall include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (or specify desired number) years beginning from the time that work under this contract is completed.
- On the Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if the Contractor is transporting any type of hazardous materials.
- Contractor shall name the City of Boulder, its elected officials, employees, agents and volunteers as “Additional Insureds” for work that is being performed by the Contractor and as respects the Contractors Pollution Liability.

B. Limits Required

The Contractor shall carry the following limits of liability as required below:

Commercial General Liability

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Payments (Any One Person)	\$ 5,000

Excess/Umbrella Liability (as needed)

General Aggregate Limit	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000

Automobile Liability

Bodily Injury/Property Damage (Each Accident)	\$1,000,000
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Workers' Compensation

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	\$ 100,000 Each Accident
	\$ 100,000 Disease Ea. Employ
	\$ 500,000 Disease-Policy Limit

Contractors Pollution Liability/Environmental Impairment Liability (as needed)

Per Loss	\$1,000,000
Aggregate	\$1,000,000

Installation Floater/Builder's Risk

For materials and equipment to be installed:

- Shall be written for 100% of the completed value (replacement cost basis)
- Deductible maximum is \$10,000.00
- Waiver of Subrogation applies on Installation Floater/Builder's Risk

308. **ADDITIONAL INSURANCE REQUIREMENTS**

Failure of the Contractor to fully comply with these requirements during the term of the Contract may be considered a material breach of contract and may be cause for immediate termination of the Contract at the option of the city. The city reserves the right to negotiate additional specific insurance requirements at the time of the contract award.

- A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis.
- B. The Contractor shall provide the city 4 (four) copies of the Certificate of Insurance Form, including all required endorsements, evidencing all required coverages, prior to signature of the contract by the city. The city will not execute the contract until the city has verified that all required insurance is in effect.
- C. The Contractor shall name "The City of Boulder, its elected officials, employees, agents and volunteers" as an Additional Insured as respects General Liability.
- D. Upon request by the city, Contractor must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.
- E. The city requires that all policies of insurance be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the city.
- F. A Separation of Insureds Clause must be included in general liability policies.

- G. The Contractor shall advise the city in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At their own expense, the Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the city a new certificate of insurance showing such coverage is in force.
- H. Contractor's insurance carrier should possess a minimum A.M. Best's Insurance Guide rating of A- VI.
- I. Commercial General Liability Completed Operations policies must be kept in effect for up to two (2) years after completion of the project.
- J. Contractors Pollution Liability policies must be kept in effect for up to two (2) years after completion of the project.
- K. Provide a minimum of 30 days advance written notice to the city for cancellation, non-renewal, or material changes to policies required under the contract.
- L. Certificate Holder: City of Boulder, Purchasing, P.O. Box 791, Boulder, CO 80306.
- M. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- N. The city and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

309. NON-WAIVER

The parties hereto understand and agree that the city is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., as from time to time amended, or otherwise available to the city or its elected officials, employees, agents, and volunteers.

310. RISK OF LOSS OR DESTRUCTION OF THE WORK DURING CONSTRUCTION

The contractor shall bear the risk of any loss or destruction to the work at any time before the city issues a certificate of substantial completion pursuant to section 713. The contractor shall bear any cost or expense arising out of the work, or from the contractor's actions, or from the action of the elements such as wind, flood, snow, hail, etc., or from ground water, or from subsidence or failure of subjacent support, or any other obstruction or difficulty which may be encountered in the work.

311. INSURANCE TERM

All required insurance in this article, except builder's risk, shall remain in effect until the expiration of all guarantee periods. In the event of a material alteration or cancellation of any insurance coverage, the contractor shall notify the project manager immediately and shall suspend work under the contract until the city issues written instructions to proceed with the work.

312. INDEMNIFICATION

The contractor shall defend and indemnify the city, its officers, employees, and agents from and against all claims, damages, losses, and expenses which arise out of or are related to the work. These shall include without limitation reasonable attorneys' fees for any services rendered by the

office of the city attorney and employees assisting the office of the city attorney and discovery and litigation costs arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including without limitation the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, attorneys' fees due for services by the office of the city attorney shall be at the rates generally charged for similar services by private practitioners within the boundaries of the city of Boulder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. If, in a final judgment no longer subject to appeal, the city is determined to be the proximate cause of a percentage of the damages, then the city shall pay that percentage of the damages to the party or parties that have been awarded the judgment and reimburse the contractor for that percentage of the attorneys' fees and costs incurred by the contractor for the defense of the suit. In any and all claims against the city or any of its agents or employees by any employee of the contractor, any subcontractor or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, except as otherwise provided by law. The obligations of the contractor under this section shall not extend to the liability of the project manager or A/E or their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by the project manager or A/E or their agents or employees, or (2) the giving of or the failure to give directions or instructions by the A/E or their agents or employees, provided that such giving or failure to give is the primary cause of the injury or damage and provided that a reasonably prudent contractor would have prosecuted the work based on such giving or failure to give directions or instructions.

ARTICLE IV. TERM

401. CONSTRUCTION PROGRESS SCHEDULE

The contractor shall submit to the project manager a proposed construction progress schedule within five (5) days following the notice to proceed. The construction progress schedule shall be subject to the project manager's approval, which approval shall not be unreasonable. The construction progress schedule shall comply with the specifications of the contract documents and shall be in the form of a graphic display indicating the proposed construction sequence for key elements of the work and the anticipated start and finish dates for each of the key elements. The schedule shall be coordinated with the critical times and dates contained in the contract documents. The city will use the construction progress schedule to monitor progress of the work. The contractor shall keep an annotated copy of the construction progress schedule in the contractor's office. The contractor shall adhere to the construction progress schedule, subject to the other requirements of the contract documents and shall provide the project manager with a detailed and accurate update of the actual construction with its monthly application for payment and at regularly scheduled construction meetings. Acceptance of the updates or the making of any payment by the city does not constitute approval of any change in the construction progress schedule or other requirements of the contract documents, nor does it constitute or imply acceptance of any of the work. In addition to liquidated

damages as provided in section 406 for failure to substantially complete the work in the time period required by the contract, if the contractor fails to keep up with the construction progress schedule, as revised to reflect approved change orders for time extensions, delays caused by the contractor, the city or the A/E, and delays caused by inclement weather, the contractor shall indemnify the city for all liability, loss or expense incurred by the city due to the contractor's failure to remain on schedule. If the city acknowledges that the contractor is off schedule, and allows the contractor to continue the work, or if the city accepts the work as meeting other contract specifications, such forbearance or acceptance shall not limit any action the city may have against the contractor for failure to remain on schedule.

402. PERIOD FOR PERFORMANCE

The contract documents shall specify a time period for performance, which may be based on days excluding weekends and city holidays. Alternatively, completion may be required before a certain specified date. Each date or time period specified in the contract documents shall be deemed material to the performance of the contract. The contract time for performance shall run from the date on which the notice to proceed is issued until the date specified for completion. The contractor must begin work no later than ten (10) days after the notice to proceed is issued. If the contractor fails to substantially complete the work within the allotted time, the contractor shall be liable for liquidated damages as set forth in section 406. Contractor acknowledges and agrees that the contract time for performance is a reasonable period in which to complete the work.

403. CONTRACT DAYS

A contract which specifies that construction will be completed within a certain number of consecutive calendar days contemplates that all days, whether weekend, holiday, or days of normal inclement weather will be included in the contract time. Unless the term "calendar days" is used, the term "day" shall refer to a day between Monday and Friday, excluding Saturdays, Sundays, or city-observed holidays.

404. SATURDAY, SUNDAY, HOLIDAY, AND NIGHT WORK

If the contractor believes it necessary to work on Saturdays, Sundays, holidays, or from 5:00 P.M. to 7:00 A.M., the contractor shall make prior arrangements with the project manager and receive written approval before the work commences, which approval shall not be unreasonably withheld. Such approval may be revoked by the project manager for good cause, including, without limitation, failure to maintain adequate equipment and lighting at night for the proper implementation, control and inspection of the work. If work is done without the project manager's prior approval and as a result the project manager is unable adequately to inspect the work, the work done during these periods of time may be declared defective, solely on the grounds that it was not properly inspected. No extra money will be awarded to the contractor by the city due to labor overtime or other increased costs of performing the work on Saturdays, Sundays, holidays, or at night, so long as such work was not caused by the actions or inactions of the city. If inspectors charge overtime or other incidental expenses for performing inspections on Saturdays, Sundays, holidays, or at night, the contractor shall be responsible to pay for all such charges, and shall not be granted a contract price increase for such charges.

405. TIME EXTENSIONS AND CONTRACTOR'S DELAY

The contractor specifically waives any and all claims against the city for monetary damages resulting from any hindrance or delay during the performance of the contract that impede the contractor's performance, except those that qualify for an extension of contract time. The contractor may be granted a time extension as expressly provided below only with respect to any hindrance or delay that impedes its performance and is described in subsections A, B, and C, for which the city will not claim actual damages. The contractor shall provide to the project manager written notice of any delays within three (3) days from the beginning of the delay. The written notice shall explain the cause(s) and the expected duration of the delay. The contractor shall file a written request for a change order extending the contract performance period within five (5) days after the period of delay has ceased. If the contractor fails so to notify the project manager of any such delay, the contractor shall be deemed to have waived any right to request a time extension, and may be held in default on the contract. All time extensions shall be made by written change order. Extensions of time will be granted only to the extent that equitable time adjustments for affected activities exceed the total float along their paths. The project manager will grant time extensions, by written change order, beyond the original schedule of performance for the following reasons only:

A. Suits, Delays by city, Acts of God, and Similar Events

1. A suit or other legal action against the city which causes a delay in the work, other than a suit or legal action asserted by the contractor, will entitle the contractor to an equivalent extension of time unless the period of such delay exceeds three (3) months. When such period is exceeded, the city will, upon a request by the contractor in writing, elect either to terminate the contract or to grant a further extension of time, whichever shall at that time appear most advantageous to the city.
2. If a suspension of work or stop work order caused by a breach of a contract condition by the city or its agents or the negligence of the city or its agents occurs, which, in the opinion of the city, justified delay of the contractor's performance, then the city will grant a reasonable time extension equivalent to the delay. The contractor has the burden to prove the events which caused each such delay, and that the contractor made timely requests for time extensions pursuant to this section. Stop work orders due to improper work or otherwise due to the contractor's acts shall not be cause for extension of time.
3. If in the city's reasonable opinion the contractor's performance is delayed by acts of God, wars, epidemics, or other causes beyond its control or anticipation, then, upon the contractor's written request, the city will grant a reasonable time extension equivalent to the delay. No such extensions shall be granted for delays caused by events within the control of the contractor, nor for delays which the contractor could have foreseen and avoided, prevented, or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays caused in whole or in part by the contractor itself, nor by its subcontractors or suppliers, including without limitation,

freight carriers, nor for any delays caused by labor unrest. In all instances, the contractor shall use its best efforts to minimize the length of delay. The contractor shall have the burden to prove the events which caused the delays, and that it made timely requests for time extensions pursuant to this section. This paragraph (3) shall not govern cases where the work is suspended for the city's convenience by written change order. Such cases will be governed by section 1003.

B. Changes in Specified Work

If the volume of specified work, measured in dollars, is increased by written change order over the total value shown in the contractor's bid proposal at the time that the contract is awarded, the contractor may be granted an extension proportionately equal to the increase in total value, if the contractor requests a time extension in writing within twenty-one (21) days after service of the change order. If a change order requires work more complex or more difficult than that originally specified and shown on the plans and specifications and such work requires more time to execute than the proportional increase in dollar value, the contractor may be granted a further time extension if the contractor requests such extension in writing within twenty-one (21) days after service of the change order.

C. Excusable, Inclement Weather

1. If the contractor believes that a contract extension should be granted due to delays caused by excusable, inclement weather, it may request a contract extension in writing from the project manager. The project manager shall thereon grant -- subject to the provisions of subsection (4) below -- an extension equal, in the project manager's reasonable opinion, in duration to the delay, if any, that was caused by excusable, inclement weather.
2. The contract time will be extended for as many calendar days in excess of the allotted number of days of excusable, inclement weather -- as set forth in subsection (4) below -- as the contractor is prevented by excusable, inclement weather, or conditions resulting immediately therefrom, from proceeding with an activity on the critical path of the Project Construction Schedule.
3. Excusable, inclement weather is snowfall, rainfall, freezing temperatures or excessive wind conditions, the degree or duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the work is to be performed, or which could not have been reasonably anticipated by the contractor, as determined from U.S. Weather Bureau records for the location closest to the site or the work for the preceding 10-year period. No extensions of contract time will be allowed for any inclement weather that could reasonably have been predicted from such weather records.
4. The contractor shall include in its construction schedule the following anticipated number of calendar days lost due to adverse weather conditions

for each month based on National Oceanic and Atmospheric Administration (NOAA) data for the Boulder area:

Jan 7 Feb 4 Mar 4 Apr 4 May 6 June 3 July 4 Aug 2 Sep 3 Oct 3 Nov 2 Dec 5

No extension of the contract time limit due to excusable, inclement weather will be considered by the city until after the number of days of excusable, inclement weather allocated to the construction schedule up to the time in question has been reached. No reduction in contract time shall be made if the allocated number of days of excusable, inclement weather is not reached.

406. LIQUIDATED DAMAGES

Time is of the essence for every time period set forth in the Contract Documents. Except for delays specified in Section 405, of the General Conditions, if the contractor fails to perform the work within the time limit set forth in the Contract Documents, or as adjusted by written change orders, the contractor shall be liable to the city for liquidated damages, not as a penalty, for the amount set forth in the Contract Agreement for Construction (Form 5, Part Three) for each and every calendar day that substantial completion of the work is delayed. The city may extend the contract period for performance without impairing its right to collect liquidated damages. The city shall have the right to deduct liquidated damages from any amount due, or that may become due, to the contractor, or to collect such liquidated damages directly from the contractor or the surety. The city has the option to enforce liquidated damages or to waive such damages.

Liquidated damages are intended only to apply to the contractor's delay in performance and are intended to compensate the city for additional city personnel efforts in administering the contract after normally scheduled completion dates, and for city government and citizen inconvenience, lost opportunities, and loss of confidence in government and morale of government when work is not completed on time. Such damages are uncertain in amount and difficult to measure accurately.

By executing the contract, the contractor agrees that the liquidated damages specified in the contract documents are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the city for extra costs which the city may become obligated to pay on other contracts which were delayed or extended because of the contractor's failure to complete the work within the contract time. Should the city incur such additional costs due to delays or extensions to other contracts resulting from the contractor's unexcused failure or delay in performing the contract, as extended, the city will assess these extra costs against the contractor in addition to the stipulated liquidated damages. In addition, liquidated damages are not intended to cover attorney's fees and costs incurred by the city in any action involving the contractor, nor any other actual costs which do not result directly from the contractor's delay in performance. In order to recover liquidated damages, the city is under no obligation to prove the actual damages sustained by the city due to the contractor's delay in performance. In addition, the contractor shall pay interest at the rate established by section 124 that shall accrue on liquidated damages from the date on which such damages arise. Liquidated damages shall be incurred in the amount calculated by the project manager as set forth in the special conditions and in part three of the contract document (Form 5), but in no case less than \$1,000 per day for each calendar day the project is incomplete beyond the substantial completion date specified herein.

ARTICLE V. COMMUNICATION AND MAINTENANCE OF RECORDS

501. SERVICE OF DOCUMENTS ON THE CONTRACTOR

Both the business address of the contractor designated in the bid proposal and the work site are designated as places to which notices, letters and other communications or documents to the contractor may be mailed or delivered. The delivery at either of the above named addresses, or the addressing and depositing in any mail box regularly maintained by the United States Postal Service, first class postage prepaid, of any notice, letter, or other communication or document to the contractor, shall be deemed sufficient service thereof upon the contractor, and the date of said service shall be the date of such delivery or mailing. The address set forth in the bid proposal may be changed at any time upon five (5) days notice by an instrument in writing, executed by the contractor and received by the city.

502. CONTRACTOR'S MAINTENANCE OF RECORDS

The contractor shall maintain a complete file of all records, communications, and other documents which pertain to the contract at its main office in Colorado or at its main office outside Colorado if it has no office in Colorado. The contractor shall maintain such records for a period of three (3) years after the date of completion of the contract, and for such longer period as may be necessary to resolve any matters which may be pending at that time.

503. CITY MAY AUDIT CONTRACTOR'S RECORDS

Subject to a requirement of confidentiality in the treatment of all confidential financial data and the contractor's internal memoranda, and privileged documents, the contractor shall permit the city to audit or inspect its records during the term of the contract, for a period of three (3) years following the completion of the contract, and for such further periods as may be necessary to resolve any matters which may be pending at that time. The purpose of this provision is to assure the contractor's compliance with the terms of the contract and to evaluate the contractor's costs and performance under the contract. Any audit conducted shall be at the sole expense of the city.

504. RECORDS OF SUBCONTRACTORS AND CONSULTANTS

The contractor shall require all of its subcontractors and consultants to maintain all of their records which pertain to the project in the same manner and for the same length of time as the contractor is required to do, and to allow the city the same access to those records as it has to the contractor's records.

505. CHANGES IN THE WORK MUST BE NOTED

The contractor shall maintain at the contractor's field office one copy of all drawings and specifications in good condition and immediately note thereon all changes made during the construction process. Any deviation between the drawings and specifications and the work actually done must be noted on this set of drawings, which should be referred to as the "as built" set of drawings. If the contractor performs work which is at variance with the plans and specifications, the contractor has the burden to prove that it has provided work equally suited for the purpose and of equal value. All underground utility structures encountered or constructed in the process of doing

the work shall be correctly located on the drawings. When the work is completed, the contractor shall deliver this “as built” set of drawings and specifications to the project manager as a condition precedent to final payment.

506. PROJECT IDENTIFICATION

In addition to appropriate warning and traffic signs, there shall be a sign at the job site which identifies the contractor and the city department in charge of construction and gives a telephone number for each. The contractor must provide this sign unless the special conditions state otherwise. This sign shall identify an authorized representative of either or both the city and the contractor who is to be contacted whenever there is an emergency at the job site, including without limitation evenings, weekends, holidays, and all times when the job site is unattended. The sign shall be placed in a prominent location, properly supported in position, and maintained in good condition during the life of the project. The contractor must obtain a sign permit from the city manager before erecting the project identification sign, pursuant to Subsection 10-11-4(a), B.R.C. 1981. The sign shall be limited to free-standing, wall or window signs not exceeding sixty-four (64) feet in total area or thirty-two (32) square feet per face and may not exceed eight (8) feet in height. Paragraph 10-11-17(a)(1), B.R.C. 1981. No sign shall obstruct traffic or a motorist’s view of traffic signs, signals or other official notices. All signs shall be constructed and conform to the construction standards set forth in Section 10-11-24, B.R.C. 1981, and with the standards for temporary signs as set forth in Section 10-11-17, B.R.C. 1981. All signs shall conform to the setback standards set forth in Section 10-11-12, B.R.C. 1981. Under Section 4-21-2, B.R.C. 1981, only licensed sign contractors shall install signs for which a permit is required.

507. SUPERVISION AT THE JOB SITE

The contractor shall provide and maintain continually on the work site a superintendent for all work being performed under the contract. The contractor shall designate the superintendent, who shall be authorized to act on behalf of the contractor in all matters related to the contract. Within five (5) days after the execution of the contract documents, the contractor shall inform the project manager in writing of the home and residence address and residence telephone number of the person designated as the superintendent. The contractor shall also provide a pager or mobile phone to the superintendent and inform the project manager in writing of the telephone number therefor. A call to any one of these numbers shall constitute notice by the city. The superintendent shall be on-call at all times.

In the event of an emergency, the contractor shall be responsible for remedying all aspects of the work creating the emergency or loss of utility service and respond within two (2) hours. If the contractor does not respond within two (2) hours, the contractor shall be responsible for any and all costs incurred by the city including, but not limited to, deployment of public safety personnel, and any labor, equipment and materials required to remedy the emergency.

Unless the project manager requests that a superintendent be replaced or permits such replacement or the superintendent ceases to be employed by the contractor or becomes sick or disabled, the same person shall continue in the capacity of superintendent and be present continuously or immediately available at the work site until the work has been completed.

508. COMMUNICATIONS AT THE WORK SITE

The superintendent shall be the normal recipient of work site communications from the project manager. Important communications from the project manager shall be in writing and shall be made by field order (Form 10), or a reasonable facsimile thereof. Other important communications from the contractor to the city shall also be in writing. Further, the superintendent shall designate agents at the site to receive such communications when the superintendent is away from the site. When the superintendent is absent, such persons shall be authorized to act immediately on emergency communications given by the project manager. If the project manager issues an emergency communication to the contractor, but there is no authorized representative of the contractor able to act on the emergency communication, the project manager may take whatever action is necessary to deal with the emergency, at the contractor's cost. If the city finds it necessary to communicate at the work site with contractor personnel authorized to receive such communications and none are available to receive such communications, the city may suspend the contractor's operations at the work site which are affected by the communications until such communications can be accomplished.

509. DISPUTES BETWEEN THE CONTRACTOR AND THE PROJECT MANAGER

The contractor shall follow all instructions issued by the project manager. If the contractor requests clarification or interpretation of any contract documents the contractor shall notify the project manager in writing. The project manager shall issue a written response to the contractor within ten (10) days following the contractor's request. If the project manager fails to issue a written reply within ten (10) days after receipt of the contractor's request for interpretation, the contractor may suspend the portion of the work which is the subject of the dispute. The contractor shall be granted a time extension of one (1) day for each day following the suspension for which the project manager fails to issue a written resolution of the dispute if the entire work is suspended. However, if the suspension applies to only a part of the work, a time extension will not be authorized until the partial suspension has run and its effect on the entire contract can be evaluated. The city shall be liable to the contractor under this section for all costs actually incurred which result from resuming the suspended work. The contractor shall not work on any part of the work which is the subject of a dispute between the contractor and the project manager until the project manager issues a written notice to continue. If the contractor proceeds with work which is the subject of a dispute between the project manager and the contractor, and the contractor later must replace this work because the project manager determines that the work was not performed in accordance with the contract documents, the contractor shall bear all costs of removal and replacement of the non-conforming work.

ARTICLE VI. CONSTRUCTION SITE REQUIREMENTS

601. PUBLIC RELATIONS

The contractor shall carry on the work in such a manner as to cause as little inconvenience as possible to the public, particularly to occupants of property near or contiguous to the project, as is consistent with good workmanship. The contractor shall notify such occupants at least forty-eight (48) hours in advance of proposed work that may block entrances or otherwise cause undue difficulty to the occupants of affected property and shall restore such entrances to usable condition as soon as possible. The contractor, subcontractors and employees shall at all times be courteous to

the public, the project manager, and other city representative while engaged in work under the contract. Any employees of the contractor, subcontractors or agents who fail to act in a courteous manner toward the public, the project manager or other city representative shall be immediately and permanently removed from the construction site by the contractor upon the reasonable request of the project manager.

The contractor shall notify all business managers and residents affected by the interruption of utilities and other services caused by his operations. Such notice shall be given at least forty-eight (48) hours prior to the interruption of service. Notice shall be given for the interruption of domestic water, irrigation water, sewer, trash pickup, and changes in access to property. Prior to interruption of domestic water service, a second notice shall be given no less than one hour and no more than four hours prior to discontinuation of service. Notifications may be oral or in written form if the business manager or resident cannot be located. Water services shall not be discontinued for more than two (2) consecutive hours without special written permission from the project manager. If requested by a commercial business, potable water bottles and toilets for use by their employees shall be furnished and serviced by the contractor.

The above items required in this section are considered as incidental to the work and no additional payment will be made by the city.

602. PROTECTION OF PERSONS AND PROPERTY

The contractor shall be responsible for initiating maintaining and supervising all safety precautions and programs in connection with the work. The contractor shall designate a person at the work site who is responsible to oversee or take precautions to prevent accidents. The contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to:

- A. All employees at the work site and all other persons affected by the work;
- B. All materials and equipment in the care, custody, or control of the contractor or subcontractor, whether stored on or off the work site;
- C. All work done under the contract;
- D. All property at the site including walks, pavements, roadways, structures and utilities, and all neighboring property which may be affected by the work; and
- E. All plant materials including without limitation grasses, trees, and shrubs except where specifically identified for removal.

The contractor shall repair or replace any damage, injury, or loss to all public or private property caused directly or indirectly, in whole or in part, by the contractor or any subcontractor or their employees or agents or anyone directly or indirectly employed by them or anyone for whose acts any one of them may be responsible. The contractor shall give all notices and comply with all applicable laws bearing on the safety of persons or property or their protection from damage, injury, or loss.

603. PROTECTION AND PREVENTION OF SITE ACCESS

Where the work is conducted in or adjacent to any street, alley, bikelane, path, sidewalk or public place, the contractor shall, pursuant to section 211, furnish and erect such barricades, fences, lights, and danger signals and shall furnish such personnel to warn the public and guard the site and shall take such other precautionary measures as are reasonably necessary to protect persons, property, and the work done under the contract. Excavations in or adjacent to public streets, alleys, bikelanes, paths or sidewalks shall be securely barricaded so as to prevent access by small children or any other person or vehicle when work is not being carried on at the site of excavation. Such barricades shall be painted in a color that is visible at night. The contractor shall follow the guidelines set forth in the Manual of Uniform Traffic Control Devices (“MUTCD”). Any costs incurred to satisfy requirements of this section will be considered Costs of the Work.

604. TRAFFIC MAINTENANCE

It is a priority for the city to maintain access for all modes of travel, including vehicles, transit, pedestrian and bicyclists, at all times. Before proceeding with construction, the contractor shall obtain written approval from the city of Boulder Division of Transportation of the proposed method of handling traffic. The MUTCD shall be followed for traffic control. The procedures designated by this hand book may be modified when necessary by change order. Closing or otherwise severely obstructing streets, alleys, bikelanes, paths, sidewalks and road systems will be permitted only after the project manager has authorized the contractor in writing to do so. When a detour is necessary because a street, alley, bikelane, path, sidewalk or road system is blocked in whole or in part by the work, the city will designate its route, and the contractor shall furnish, post, and maintain detour signs of the type and size required by the city of Boulder Division of Transportation at the places designated by the city of Boulder Division of Transportation prior to impairing public access or closing or otherwise obstructing a street, alley, bikelane, path, sidewalk or road system. The superintendent designated pursuant to section 507 shall be responsible for traffic control. The superintendent shall have the responsibility to sign documents on behalf of the contractor related to traffic control, and to handle all other details covered by the contract documents which contribute to the comfort and safety of the traveling public.

605. MAINTAINING TRAFFIC DURING SUSPENSION OF WORK

Upon any suspension of the work under this contract (*see* article 11), the contractor shall make passable and shall open to vehicles, bicyclists and pedestrians such portions of the work site as are reasonably directed by the project manager for the temporary accommodation of the public during the anticipated period of suspension. Thereafter, until the project manager orders that construction be resumed, the city shall maintain any temporary travel ways through the work site. Unless the city expressly and in writing assumes such responsibility, the contractor shall be responsible for protecting the work site itself during the period of suspension.

606. RESUMPTION OF WORK

When work is resumed, the contractor shall replace or renew any work or materials damaged or lost as a result of temporary use of portions of the work site. The contractor shall also remove, as directed by the project manager, any work or materials used by the city in the maintenance of any temporary travel ways. The contractor shall complete the work in every respect as though its

implementation had been continuous and without interruption. Except for suspensions of work pursuant to sections 1003 or 1008, the contractor shall bear the costs which result from the period of suspension and all start up costs associated with resuming the work as set forth in this section.

607. DRAINAGE

The contractor shall provide at its own cost and expense all reasonable methods for adequately draining the work and shall assume full responsibility and liability for damage to any person or property resulting from inadequate or excessive drainage unless the damage resulted from a design error which was caused by the city or by an A/E hired by the city, or is due to sequencing of projects beyond the contractor's control. The contractor shall be responsible for the preservation and protection of storm water collection systems and other natural and developed drainage ways which may be affected by work done under the contract. This municipal service system is operated and regulated by the Utilities Division of the city of Boulder Department of Public Works. The contractor is required to notify the Director of Public Works for Utilities prior to initiation of the work when the work may diminish the system's capabilities or may redirect water flow. This notification process does not, however, relieve the contractor of any responsibility for damage which may result from the contractor's operations.

If the construction requires land disturbance of one acre in size or greater, then the contractor shall conform to the requirements for a stormwater discharge permit associated with construction activity from the Colorado Department of Public Health and Environment (Colorado Department of Public Health and Environment, Water Quality Control Division, 303-692-3500 <http://www.cdphe.state.co.us/wq/PermitsUnit/wqcdpmt.html>). If this permit is not obtained by the city, the general contractor is responsible for obtaining this permit from the Colorado Department of Public Health and the Environment.

The contractor shall satisfy all environmental quality standards imposed by law and take reasonable steps to minimize the environmental impact of the work. These environmental quality standards include, without limitation, noise control, air pollution control, water pollution control, and dust control, which may be placed at risk by the activities of the contractor:

- A. The contractor shall not pollute the water of any pond, lake, stream, ditch, or other watercourse, as prohibited pursuant to Title 11, Chapter 5 "Storm Water and Flood Management Utility," B.R.C. 1981, which generally prohibits discharge of pollutants to water bodies.
- B. The contractor will implement erosion control practices and stormwater best management practices in accordance with Title 11, Chapter 5 "Storm Water and Flood Management Utility," B.R.C. 1981.
- C. The contractor will comply with permits required to discharge groundwater to the storm drainage system in accordance with Title 11, Chapter 5 "Storm Water and Flood Management Utility," B.R.C. 1981, which regulates groundwater discharges to storm sewer.

608. WASTE WATER

Except for sanitary sewage which shall be discharged only into the city’s sanitary sewer system, the contractor shall not discharge any water or other liquids to the city’s sanitary sewer system. All bypassing or pumping of sanitary sewage required during construction shall be to other sanitary sewer facilities approved by the project manager by a field order. All existing sanitary sewer facilities shall remain in continuous and full operation during construction. All costs incurred for bypassing, removal, pumping, and disposal of wastewater and sanitary sewage during construction shall be borne by the contractor.

609. DITCH IMPACTS AND CROSSINGS

The contractor shall confirm, prior to the start of construction, what agreements the city has procured with any ditch company. If a ditch agreement has been negotiated between a ditch company and the city, the contractor is responsible for complying with the terms of that agreement.

The contractor is responsible for notifying a ditch company’s representative when the work will breach a ditch, tunnel under a ditch, is within 25 feet of a ditch, redirect the flow of a ditch, or in any way will impact or diminish the ditch system’s capability to carry water. Such notification shall occur as soon as the schedule for the work is established, but at a minimum of fourteen (14) days prior to initiating the work. This notification does not relieve the contractor of any responsibility for damage that may result from the contractor’s operations, nor does it relieve the contractor of any responsibility to obtain any necessary approvals from a ditch company. Should the contractor require additional approval from a ditch company, the contractor should note that such approvals generally take more than thirty (30) days to obtain.

610. PROTECTION OF MUNICIPAL SERVICE FACILITIES

The contractor shall provide and maintain free access to all municipal service systems including, without limitation, fire hydrants, water and gas valves, manholes, and utility poles. All natural and developed drainage ways shall be kept open unless and until other provisions satisfactory to the project manager are made for the removal of storm water. If the contractor damages any municipal service systems, the contractor shall immediately repair or replace the damaged municipal service facilities at no cost to the city.

611. LIST OF MUNICIPAL SERVICE SYSTEMS

If the contractor’s work affects any municipal service system, the contractor shall notify the affected organization immediately. The term “municipal service system” or “facility” shall mean any equipment located in the public right-of-way or in a utility easement, whether or not platted or formally deeded to the city. The list below is not intended to be complete; rather, it identifies the systems which contractors encounter most frequently:

<u>System</u>	<u>Agency to Contact</u>	<u>Telephone #</u>
Telephone	Qwest	1-800-954-1211
Buried Utilities Location	Utility Notification Center	1-800-922-1987

Service	of Colorado	
Streets, Roads, Alleys, Bikelanes, Paths or Sidewalks and Traffic Control Equipment	Department of Public Works/Transportation Division	303-441-3266
Sanitary Sewer Collection, Storm Water Collection and Drainage Ways; Water Distribution	Department of Public Works/Utilities Division	303-413-7100
Electrical Power Lines and Natural Gas Lines	Xcel Energy	303-623-1234
Tree Removal/Pruning in city-owned property and right-of-way	Parks and Recreation Department, Forestry Division	303-441-4406
Work within easements through public parkland	Parks and Recreation Department	303-413-7200
Open Space and Mountain Parks	Open Space Department	303-413-3440
Police and Alarms	Police Department	303-441-3333
Fire	Fire Department	303-441-3350
Cable Television	Comcast	303-930-2000

612. INTERRUPTIONS TO UTILITIES

If the contract requires that any utility be interrupted, or the contractor desires to interrupt a utility for its convenience, it shall promptly contact the affected utility and customers and obtain the necessary permissions. The interruption shall be confined to the least possible time period and cause the least possible inconvenience to service recipients. The contractor shall bear all costs related to a utility interruption. If such an interruption is required by the contract, the contractor shall include its best estimate of those costs in the bid items.

613. UTILITIES, STRUCTURES, AND CONDITIONS SHOWN IN CONTRACT DOCUMENTS

- A. Except as set forth in paragraph B, below, existing underground, surface or overhead utilities, structures and conditions may be omitted in the drawings, specifications and other contract documents, and those shown may not be accurately situated or drawn to scale. The contractor shall be responsible for protecting all such utilities as described below.
- B. The approximate locations of underground facilities and the tie in points which are owned or operated by the city are shown on the plans and specifications. As part of the work contractor shall, on behalf of the city, locate and mark the precise location

of such facilities as required by '9-1.5-101 *et seq.*, C.R.S. In addition the plans and specifications may indicate that the location of any underground facilities owned or operated by the city are “unknown,” “uncertain” or “within a range.” The contractor shall have full responsibility for determining the exact location of all the above mentioned underground facilities by “potholing,” “handwork” or such other means as may be necessary to determine the precise location without damaging such underground facilities. This work is included in the contract price unless called out as a separate pay item. The precise location of all such underground facilities shall be incorporated into the record drawings by the contractor.

- C. Contractor shall notify the “Utility Notification Center of Colorado” in a timely fashion as required by Section 9-1.5-101 *et seq.*, C.R.S. Contractor shall request written record of any information from all owners or operators, of underground facilities (as defined in the above statute) regarding the location of the specific underground facilities. Contractor shall comply with all requirements of the above statute as it pertains to the “excavator”. The city shall not be responsible for the accuracy or completeness of any information provided by third-party owners or operators of underground facilities, including the marking thereof.
- D. The cost of all the following will be included in the contract price and contractor shall have full responsibility for:
1. Reviewing and checking all information and data provided by all owners or operators of underground facilities;
 2. Locating all underground facilities shown or indicated in the contract documents;
 3. Coordination of the work with the owners and operators of all underground facilities during construction;
 4. The safety and protection of all utilities and the entire expense of repairing or replacing any utilities or structures disturbed or damaged during construction.
 5. The contractor shall be responsible for all coordination and implementation associated with any necessary relocation or removal of utilities, including relocation and removal which must be performed by third parties.
 6. The contractor shall be responsible for the location and protection of all individual service lines, notwithstanding any requirements to the contrary in Section 9-1.5-101 *et seq.*, C.R.S.
 7. The contractor shall be responsible for the repair of any damage to utilities that have been properly located by the designated utility locating service and for utilities for which the contractor has not obtained the proper field location marking.

- E. If any underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the contract documents or by reason of information supplied pursuant to Section 9-1.5-101 *et seq.*, C.R.S., contractor shall promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any work in conjunction therewith (except in emergency situations) identify the owner of such underground facility and give written notice to that owner, the “Utility Notification Center of Colorado”, and the city. The location of all such underground facilities shall be incorporated into the record drawings by contractor. The city will promptly review the underground facility and determine the extent, if any, to which a change is required in the contract documents to reflect and document the consequences of the existence of the underground facility. During such time, contractor shall be responsible for the safety and protection of such underground facility. The contractor shall be allowed an increase in contract price, or an extension of contract time, or both, in accordance with article 8, to the extent that they are attributable to the existence of any underground facility that is not shown or indicated in the contract documents and that the contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the city and contractor are unable to agree on entitlement to or the amount or length of any such adjustments in the contract price or contract time, contractor may make a claim therefore as provided in the contract documents.
- F. In the event of a break in an existing water main, gas main, sewer or underground cable, the contractor shall immediately notify the responsible official of the organization operating the utility interrupted and the project manager, and shall lend all possible assistance in restoring service.

614. ARCHAEOLOGICAL AND HISTORICAL DISCOVERIES

If any fossils or treasure or unusual or valuable geological formations are found during the work, such items shall be carefully preserved by the contractor, who shall notify the project manager and request instructions regarding the disposition of these items. These items are the property of the city. In addition, the contractor shall inform the project manager of any evidence which might suggest to a lay person that deposits of historical or archeological interest or treasure or unusual or valuable geological formations may be present on the work site. Upon making such a discovery, the contractor shall avoid disturbing that part of the work site. This could require that the contractor’s activities be redirected or stopped until the project manager determines how to proceed. No further disturbance of such discoveries shall be made until the Regional Office of the Environmental Protection Agency and the State Historical Preservation Officer have been notified, and the project manager determine how the work should proceed. If the project manager finds that protecting such discoveries causes an increase or decrease in the contractor’s cost or time required to perform the work, an equitable adjustment will be made in the contract price, in accordance with article 8 and/or time of performance by way of a change order.

615. HAZARDOUS OR EXPLOSIVE MATERIALS

Before using or storing hazardous or explosive materials at the work site, the contractor shall inform the project manager and the city's fire department of the proposed action in writing, and shall receive the project manager's written approval before proceeding. Explosives or hazardous materials shall be handled and used by experienced workers only. All firing shall be done by electricity. All storage places shall be marked clearly: "DANGEROUS –EXPLOSIVES" or "DANGEROUS - HAZARDOUS MATERIALS." Caps or other exploders shall not be stored at the same place where dynamite or other explosives are stored. All explosives, firing devices, and other hazardous materials shall be kept in locked containers.

616. PROTECTION OF PRIVATE PROPERTY

The contractor shall not enter upon private property for any purpose without having previously obtained permission from the property owner. The contractor shall be responsible for the preservation of, and shall use every reasonable precaution to prevent damage to all private property adjacent to the work site. The contractor shall repair or replace any damage, injury, or loss to such property caused directly or indirectly, in whole or in part, by the contractor or any subcontractor, their employees or agents, or anyone directly or indirectly employed by them or anyone for whose acts anyone of them may be responsible to a condition substantially similar or equal to that existing before such damage was done, by repairing, rebuilding, or otherwise restoring the property or paying the owner for such damage as may be directed by the project manager. If the contractor fails to restore such property or pay for such damage, the city may, upon forty-eight (48) hours written notice to the contractor under ordinary circumstances, and without notice when a nuisance or hazardous condition results, repair, rebuild, or otherwise restore such property or pay for such damage and the cost thereof shall be deducted from any payments due to the contractor under this contract. If not so deducted, the contractor shall immediately reimburse the city for the cost thereof.

The contractor shall immediately notify the project manager of all proposed uses of private property related to the project. The contractor shall provide written verification that the use of the private property has been negotiated with and approved by the private property owner prior to the use of the property. Verification shall include Boulder County records related to property ownership, and signed and notarized agreement(s) between the property owner and the contractor. Uses of private property that are considered directly related to the project include, but are not limited to, material storage, equipment or manpower access, material disposal, and material borrow. In case the contractor negotiates use of the private land(s) with property owners for its convenience, the contractor shall be fully responsible for all related negotiations and payments.

617. PROTECTION OF EXISTING PLANT MATERIALS

The contractor shall be responsible for taking all reasonable steps for protecting, transplanting, and replanting existing trees, shrubs, and other plant materials which may be affected by the work. Plants designated to remain shall be protected by construction fencing or barriers at all times during the entire contract period. No material shall be stockpiled and no equipment shall be parked or repaired within twenty-five (25) feet of existing trees unless it is impossible to avoid doing so. No oil, gasoline, concrete, or other materials shall be dumped or temporarily stockpiled anywhere on site unless permission is first obtained from the project manager. *See* section 703. Any plants damaged or scarred during construction shall be mitigated immediately at the contractor's expense,

see Chapter 6-6, “Protection of Trees and Plants,” B.R.C. 1981. Where separations expose or damage the root systems of plants designated to remain, the contractor shall take remedial measures at the direction of the project manager within two (2) hours or as soon as reasonably possible to insure the health of the plant. Plants designated to remain but which are, in the opinion of the project manager, damaged beyond repair, shall be replaced by the contractor at the contractor’s own expense with a similar size and species chosen by the project manager. Any existing sod damaged by the construction operations shall be replaced by the contractor at the contractor’s own expense. The contractor’s liability for damages due to injured plant materials shall not be limited to the replacement of such materials, but shall also include damages incidental to removing and replacing such materials. No plant materials shall be cut except with the written permission of the project manager. If the contractor must repair or replace damaged plant materials, the contractor shall guarantee such replacement materials for one full growing season following the planting thereof. As used herein, the growing season begins on April 1 and ends on August 31.

618. PLANTING, PROTECTION AND GUARANTEE OF PLANT MATERIALS

The contractor shall take special care when plant materials have been planted as part of the work. If such plant materials are damaged or die from natural causes or due to the negligence of the contractor within a period of one (1) full growing season from the date of planting, then the contractor shall replace such plant materials with plant materials of the same size and quality at no cost to the city. Damaged plant materials shall be replaced no later than the following growing season, and sooner if possible. As used herein, the growing season begins on April 1 and ends on August 31. The project manager shall approve all plant materials, including replacement materials, in writing before the planting thereof. If the contractor must replace any plant materials, the contractor shall guarantee such replacement items for a period of one full growing season following the planting thereof. If the plant materials so replaced are damaged or die from natural causes or due to the negligence of the contractor during the guarantee period, the contractor shall replace such damaged plant materials, and again guarantee them for an additional full growing season, and so on until the guarantee is fully met.

If the project manager directs, the contractor shall guarantee proper performance of landscaping materials for a period of two years from the date of final completion and secure this guarantee with a maintenance bond. This maintenance bond shall be based on the cost of landscaping as set forth in the bid schedule or schedule of values, and shall only apply to landscaping maintenance purposes including, without limitation, replacement of trees, shrubs, reseeding, weed control, operation and repair of sprinkler system, and any other maintenance requirements.

619. WEED MANAGEMENT PLAN

All weed control practices shall be in accordance with the city’s Integrated Pest Management Policy, available from the city of Boulder, Office of Environmental Affairs (Atrium Building at 13th and Canyon, phone: 303-441-1915). The contractor shall prepare a weed management plan in accordance with this policy and submit it to the project manager. Chemicals shall not be used for weed control unless approved by the project manager. The contractor shall comply with the pesticide notification requirements of this policy and notifications required under Title 6, Chapter 2 “Weed Control,” B.R.C. 1981, and Title 6, Chapter 10 “Pesticide Use,” B.R.C. 1981.

620. WORK IN EXISTING BUILDINGS

If the work involves an existing building, the contractor shall plan and execute the work to avoid unnecessary damage to walls, ceilings, ducts, pipes, wires, and any other building elements. The contractor shall organize and plan the work to reduce to a minimum the need for cutting or otherwise removing load bearing structural elements to accommodate the installation of piping, ductwork, or equipment. If two or more persons are doing work in the same place, the contract superintendent shall be responsible for coordinating efforts. If cutting or removal of structural elements is necessary because the work could not be organized and planned to avoid such cutting or removal, the contractor shall so inform the project manager. The contractor shall not damage or endanger any portion of other work of the city or any separate contractor by cutting, patching, or otherwise altering any work, or by excavation or except with the written consent of the project manager and of such separate contractor. Such consent shall not be unreasonably withheld. The contractor shall be responsible for all repair, replacement and patching that becomes necessary. If the work involves an existing building, the contractor shall erect and maintain during the progress of the work suitable dustproof partitions to protect the building and the occupants thereof. The contractor shall schedule the work of subcontractors and other persons in order that each may accomplish the work in an efficient and orderly fashion and in a manner which will permit maximum use of the building and minimize impairment of any existing facilities.

621. CONNECTIONS TO EXISTING FACILITIES

Unless otherwise specified or indicated, the contractor shall make all necessary connections to existing facilities, including, without limitation, structures, drain-lines, and utilities such as water, sewer, and electric. In each case, the contractor shall receive permission from the city or the owning utility prior to undertaking connections. The contractor shall protect facilities against deleterious substances and damage.

Connections to existing facilities which are in service shall be thoroughly planned in advance and all required equipment, materials, and labor shall be on hand at the time of undertaking the connections. Work shall proceed continuously, around the clock if necessary to complete connections in the minimum time. Utilities interruptions shall be kept to a minimum and scheduled for the least inconvenient time for service recipients. Operation of valves or other appurtenances on existing utilities, when required, shall be by or under the direct supervision of the owning utility.

622. REMOVAL/REPLACEMENT OF EXISTING FACILITIES

The contractor shall perform all removal and replacement required for, and in connection with, the work, including but not limited to, the following:

- A. Removal of improperly timed work;
- B. Removal of samples of installed materials for testing;
- C. Alteration of existing facilities;
- D. Installation of new work in existing facilities.

Contractor shall provide all shoring, bracing, supports, and protective devices necessary to safeguard all work and existing facilities during cutting and patching operations. Contractor shall not

undertake any cutting or demolition which may affect the structural stability of the work or existing facilities without the project manager's concurrence.

Materials shall be cut and removed to the extent indicated on the drawings or as required to complete the work. Materials shall be removed in a careful manner, with no damage to adjacent facilities or materials. Materials which are not salvable shall be removed from the site by contractor.

All work and existing facilities affected by cutting operations shall be restored with new materials, or with salvaged materials acceptable to the project manager, to obtain a finished installation with the strength, appearance, and functional capacity required. If necessary, entire surfaces shall be replaced and refinished.

623. PROTECTION AGAINST WEATHER

All work and construction materials, unless otherwise protected, shall be protected in a manner to prevent damage to the construction materials. Sufficient covering shall be kept ready at the work site for this purpose. If the city chooses to protect any construction materials or work done under the contract which the contractor has left unprotected, the contractor shall reimburse the city for the value of city labor and materials expended in protecting the work or construction materials.

624. TEMPORARY ENERGY, WATER, TELEPHONE AND OTHER SERVICES

The contractor shall pay for all temporary energy, water, telephone, and other services needed to do the work and provide and pay for all temporary facilities needed to deliver such services to the work. Temporary facilities shall be installed and maintained to protect the public and workers and shall conform to any applicable requirements for the delivery of the services. Upon completion of the work, the contractor shall remove all such temporary facilities. The contractor may use a structure's permanent heating system in order to provide temporary heat if the project manager approves this in writing. If temporary heating is required for the benefit of the city before the permanent heating system is available, the contractor shall provide safe heating apparatus acceptable to the project manager and shall provide all fuel that is required. All expenses resulting from temporary heating shall be paid for by the contractor and not reimbursed by the city. When the heating system in any new construction is ready for operation, the contractor may put it into operation and remove the temporary heating equipment. Operation of the heating system before the city issues a certificate of substantial completion is at the contractor's risk and expense.

625. SANITARY FACILITIES

The contractor shall provide and maintain suitable, weather tight, plastic or painted sanitary toilet facilities for any and all workers engaged on the work for the entire construction period. The contractor shall keep the toilets clean. When the toilet facilities are no longer required, the contractor shall promptly remove them from the site and disinfect and treat the site area as required. Toilet facilities of any existing building at or near the site shall not be used by employees or agents of the contractor or subcontractors unless the project manager grants prior written approval.

626. MONUMENTS AND STAKES

Prior to starting work on site, the contractor shall hire a licensed surveyor to locate and stake, with a very visible temporary stake, all existing property corner markers and survey monuments within the planned disturbance area of the project or within the right-of-way access to the project. The contractor shall not disturb any monuments or stakes until so ordered by the project manager. In case any monument or stake is disturbed by the contractor without orders from the city, the contractor shall pay the cost of the survey and other work required to relocate the same. Any work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points located, established, or checked by the city may be ordered removed and replaced by a licensed surveyor at the contractor's expense. In such case, the contractor shall bear any expense to the city caused by improper location of the work.

627. PROTECTION OF THE ENVIRONMENT

The contractor shall satisfy all environmental quality standards imposed by law and take reasonable steps to minimize the environmental impact of the work. These environmental quality standards include, without limitation, noise control, air pollution control, water pollution control, and dust control, which may be placed at risk by the activities of the contractor; (the regulations can be accessed via the city's website at www.bouldercolorado.gov). In addition:

- A. The contractor shall not burn any trash, rubbish, or other materials except in accordance with the provisions of Paragraph 10-8-2(b)(29), B.R.C. 1981.
- B. The contractor shall not pollute the water of any pond, lake, stream, ditch, or other water course on city property, as prohibited pursuant to Section 5-4-11, B.R.C. 1981.
- C. The contractor shall not deposit in any part of the water utility any substance or material that will injure or obstruct the utility, or contaminate or pollute the water or obstruct the flow of water, as prohibited pursuant to Section 11-1-12, B.R.C. 1981.
- D. The contractor shall comply with the provisions of Chapter 11-3, B.R.C. 1981, regarding industrial and prohibited wastewater discharges.
- E. The contractor shall not discharge visible emissions from motor vehicles pursuant to Section 7-3-5, B.R.C. 1981.
- F. The contractor shall implement erosion control practices and stormwater best managements practices in accordance with Section 11-5-6, B.R.C. 1981.
- G. The contractor will comply with permits required to discharge groundwater to the storm drainage system in accordance with Section 11-5-7, B.R.C. 1981.

Should the contractor or its subcontractors fail to satisfy environmental quality standards, the city shall have the right to employ outside assistance, city employees, or a private contractor to provide control and clean up, as necessary. All such costs may be deducted from any payment due to the contractor or charged to the contractor directly.

628. NOISE CONTROL

The contractor shall comply with all provisions of Sections 5-6-2 and 5-3-8, B.R.C. 1981. If the contractor believes that the work will violate these provisions, the contractor shall notify the project manager and shall also apply for a variance from the city's Environmental and Zoning Enforcement Division before beginning the work. A variance may be granted if it is found that compliance with these standards will cause an undue hardship and it is found that:

- A. The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply; and
- B. No reasonable alternative is available to the applicant.

If a variance is granted, reasonable conditions or requirements may be prescribed to minimize adverse effects upon the community or the surrounding neighborhood.

629. STORAGE AND REMOVAL OF CONSTRUCTION MATERIALS

The contractor shall routinely keep the work site and the surrounding premises free of accumulated waste materials and rubbish. Contractor shall provide adequate trash receptacles about the site and shall promptly empty the containers when filled. Waste materials must be removed regularly to a suitable landfill or recycling facility. Volatile wastes shall be properly stored in covered metal containers and removed daily. Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams or waterways. If space is available, the project manager may designate a place on the site to collect debris, rejected materials and other waste materials. If such a place is designated, the contractor shall, at the contractor's sole expense, install fencing and whatever else is necessary to keep loose materials confined so that they are not scattered by wind. The contractor shall be liable for any damage caused by construction materials which have been scattered by wind. The contractor and all subcontractors are hereby notified of the frequent wind hazards of Boulder, and waive any defense that wind gusts of high velocity could not be anticipated. Reusable construction materials such as concrete forms and scaffolding shall be neatly stacked by contractor when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage. Progress payments may be withheld if the contractor fails to maintain the work site in a clean, orderly, and safe condition.

The contractor shall re-use and recycle, to the greatest extent possible, the waste produced as a result of the project. Unless otherwise indicated or specified, existing materials and equipment removed as a part of the work shall become contractor's property. Contractor shall carefully remove, in a manner to prevent damage, all materials and equipment specified or indicated to be salvaged and reused or to remain the property of city. Contractor shall store and protect salvaged items specified or indicated to be reused in the work. Salvaged items not to be reused in the work, but to remain city's property, shall be delivered by contractor in good condition to the city as directed by the project manager or at the city Yards. Any items to be reused or salvaged that are damaged in removal, storage, or handling through carelessness or improper procedures shall be replaced by contractor in kind or with new items. Contractor may, at its option, furnish and install new items in lieu of those specified or indicated to be salvaged and reused, in which case such removed items will

become contractor's property. Existing materials and equipment removed by contractor shall not be reused in the work except where so specified or indicated.

630. EXISTING TRAVEL WAYS CONDITIONS DURING CONSTRUCTION

When reasonable and appropriate, equipment, tools, and materials shall be kept out of traveled ways such as streets, alleys, sidewalks, paths and bikelanes. Equipment which may endanger vehicular traffic must be lighted and marked to warn motorists. No sand, gravel, rocks, mud, dirt, or other debris may be deposited upon any streets, alleys, sidewalks, paths and bikelanes in violation of Section 8-2-10, B.R.C. 1981. If the contractor does not comply with this provision after receiving written notification, the city may have the debris removed and the costs of removal may be deducted from any payment to the contractor or charged to the contractor directly.

631. POST-CONSTRUCTION CLEANUP AND REPAIRS

At the completion of the work, the contractor shall remove all spots from floors, walls, ceilings, windows and doors and, where necessary, refit windows, doors and cabinet work. The contractor shall also clean all window glass and all plumbing fixtures. The contractor shall make such minor repairs and alterations as may be necessary to make any building or structure ready for occupancy. The contractor shall replace all broken and scratched glass with material which complies with the contract documents. This section shall not apply after or to the extent that the city has taken possession of a building on which the contractor has performed work. On all street construction projects, the contractor shall conform the work to acceptable line and grade, as determined by the project manager. In addition, the contractor shall have the streets, alleys, sidewalks, paths and bikelanes affected by the work swept clean of sand, gravel, rocks, mud, dirt or other debris by a street, alley, sidewalk, path and bikelane cleaner when necessary, as determined by the project manager. The city will not authorize final payment until the contractor has removed all rubble and other debris from the street and adjoining work area.

ARTICLE VII. CONTRACTOR'S WARRANTY AND GUARANTEE

701. CONTRACTOR'S WARRANTY AND GUARANTEE

The contractor's guarantee shall continue for a period of two (2) years after the date of substantial completion, except as otherwise provided in the contract document, notwithstanding the warranty period of any product which may be incorporated into the work which would otherwise expire before the expiration of this two-year warranty period.

The contractor warrants and guarantees to the city that all materials and equipment will be new, unless otherwise specified, suitable for the purpose intended and will be of the highest quality, new, merchantable, and fit for the purpose for which they are intended, and that the work will be performed using the best skills and workmanship to provide a project of the highest quality. The contractor also warrants and guarantees that the workers who perform the work will be sufficiently skilled to produce a high quality product which is free of faults or defects, including blemishes (surface defects) and flaws (internal defects), and in accordance with the requirements of the contract documents and of any inspections, tests or approvals required.

Contractor further warrants that it has full title to all equipment, components and other items conveyed to the city under the terms of this contract, that its transfer of such title to the city is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interests, liens, or encumbrances, whatsoever. The contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the city.

All subcontractors', manufacturers' and suppliers' warranties and guarantees, expressed or implied, for any part of the work and any materials used therein, shall be obtained by the contractor for the benefit of the city whether or not such warranties have been assigned or otherwise transferred to the city, and enforced by the contractor during its guarantee period. The contractor shall assign or transfer such warranties and guarantees to the city if the city requests the contractor to do so. If within ten (10) days after written notice by the project manager to the contractor, or its agent, requesting such repairs or replacement, the contractor shall neglect to make or undertake with due diligence to do the same, the city may make such repairs or replacement in accordance with the terms of the contractor's performance bond at the contractor's and/or surety's expense, provided, however, that in the case of emergency where, in the judgment of the project manager, delay would cause serious loss or damage, repairs or replacement may be made without notice being sent to the contractor.

The duties and obligations imposed by these general contract conditions and the rights and remedies available hereunder and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the contractor and the remedies available to the city thereunder, shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the contract documents.

Nothing herein shall be construed to establish a period of limitation with respect to any other obligation which the contractor might have under the contract documents. The establishment of the warranty period set forth above relates only to the specific obligations of the contractor to correct known defects in the work which are discovered and called to the contractor's attention during the warranty period, and has no relationship to the time within which its obligation to comply with the contract documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the contractor's liability with respect to its obligations and resulting damages. Nothing herein shall limit the city's right to seek recovery for latent defects which are not observable until after the warranty periods have run.

The contractor shall repair or replace all damaged or defective work immediately upon discovering any damage or defect, provided such damage or defect is not due to a design error caused by the city or an A/E hired by the city or an agent or employee thereof. The contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the construction manager, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage to the extent the above do not arise out of contractor's action or failure to act. The contractor shall promptly, without cost to the city and in accordance with the project manager's written instructions, either correct such defective work, or, if it has been rejected by the city, remove it from the site and replace it with non-defective work. The contractor's guarantee shall cover all materials and equipment incorporated in the work, and shall cover the work of the contractor and any subcontractors and their employees and agents engaged in the work.

As used in this contract, the terms “warranty” and “guarantee” shall be synonymous, and the terms “warranty period” and “guarantee period” shall be synonymous.

702. EXPERIMENTAL CONSTRUCTION METHODS

If the contractor proposes to use any method or product which can reasonably be considered to be experimental, the contractor must advise the project manager of that proposed method or product in writing. The contractor shall not employ any such experimental method or product until advised to proceed by the project manager in writing. The city may require special guarantees of the contractor to cover the work produced by the experimental method or product. By failure to require any such special guarantees, however, the city does not excuse the contractor for liability due to damages resulting from the use of experimental methods or products.

703. MATERIALS

The contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials to be used in the work. All materials used shall be, unless otherwise specified in the bid proposal, the standard stock products of reputable manufacturers. From the time of commencement of the work until its completion, the contractor shall be solely responsible for the care of all materials delivered at the site intended for use in the work, unless the materials are damaged by an act of the city or an employee or agent thereof. All injury or damage to any materials, whether or not incorporated into the work, shall be repaired or replaced at the contractor’s expense before final payment shall be made unless the injury or damage is caused by an act of the city or an employee or agent thereof. The contractor shall provide suitable protection for all materials intended for use in the work, as well as for all completed work. The contractor may use a portion of the work site for storage of materials and equipment, provided that the use of this portion of the site is approved in writing by the project manager, which approval shall not be unreasonably withheld, and that it is protected from wind as provided in section 623. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the particular manufacturer, fabricator, or processor, except as otherwise provided in the contract.

704. MATERIALS TESTS

If the contract documents require any portion of the work to be tested or specially inspected, the contractor shall give the project manager forty-eight (48) hour advance notice of its readiness in order that the project manager may observe such testing. In addition, the project manager may order testing or special inspection of any materials employed in the work. The city shall bear all costs of tests or special inspections not called for by the contract documents. If such testing or special inspection reveals a failure of the work to comply with the requirements of the contract documents, the contractor shall bear all costs of replacement thereof including retesting. The contractor shall provide such facilities as the city may require for collecting and forwarding samples and for conducting materials tests. The project manager may require that the contractor not use the materials represented by the samples which have been requested by the project manager until the project manager has informed the contractor that the materials satisfy the requirements of the contract documents. The contractor shall furnish the required samples to the city. If testing results require that the contractor obtain new or additional materials, these shall be obtained at the contractor’s expense. In addition, the contractor shall pay all incidental expenses associated with

procuring such new or additional materials, including, without limitation, transportation and shipping costs.

705. PROJECT INSPECTOR

A project inspector is assigned to a project to keep the city informed as to the progress of the work and the manner in which it is being done; to keep records; act as liaison between the contractor and the city; and to call the attention of the contractor to any deviations from the contract documents. The project manager shall inform the contractor as to who will be serving as the project inspector.

The contractor shall permit a project inspector unlimited access to the work as well as whatever access is needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the work.

706. AUTHORITY OF PROJECT INSPECTOR

A project inspector may communicate to the contractor any work directives, change orders, field orders, or other modifications in the work ordered by the project manager. The project inspector is authorized to reject any work or materials which do not conform with the contract documents, and if necessary, to suspend operations until corrective measures are taken, but may not order any modifications in the contract documents, or in the materials or construction methods employed by the contractor, unless specifically authorized by the project manager by a field order or change order.

The project inspector shall not have the power to waive obligations of the contractor, to revoke, alter, enlarge or reduce the requirements of the contract documents, (nor to delay the fulfillment of the contract by failure to inspect materials and work with reasonable promptness), or to approve or accept any portion of the work or to issue instructions contrary to the contract documents. The contractor may not rely upon information or instruction offered by any person other than the project manager unless the project manager has authorized such other person in writing to deliver or otherwise communicate instructions to the contractor.

If the contractor questions or disagrees with any communication of a project inspector, the contractor shall notify the project manager, who shall inform the contractor in writing how to proceed. The contractor shall not be entitled to claim damages because the contractor relied on information or instructions offered by a project inspector and as a result performed work which was defective, or had to be repaired or replaced, unless the information or instruction was in the form of or pursuant to a writing issued and signed by the project manager.

The presence or absence of a project inspector on the job will be at the sole discretion of the city and such presence or absence of a project inspector will not relieve the contractor of its responsibility to obtain the construction results specified in the contract documents.

707. INSPECTION OF WORK BY PROJECT INSPECTOR

The project manager and project inspector shall at all times have the right and access to inspect the work and materials during normal working hours. The contractor shall furnish all reasonable aid and assistance required by the project manager or project inspector for the proper examining of the work

and all parts thereof. Subject to the other provisions of this section, unless otherwise directed by the project manager, no work shall be done or materials used without inspections by the project manager or the project inspector having been performed, and no work shall be covered up or backfilled until the project manager's or project inspector's inspections are completed.

All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, during manufacture and/or construction and at any and all places where such manufacture and/or construction is carried on.

Observations, inspections, and tests by the project manager, project inspector, or others are for the express purpose of providing quality assurance for the sole benefit of the city. Such activities shall not relieve the contractor from its quality control obligations or from its obligations to perform the work strictly in accordance with the requirements of the contract documents.

Nothing in this article shall in any way be construed as to require or to place responsibility for the method, manner or supervision of the performance of the work under this contract upon the project inspector or the city. Such responsibility rests solely with the contractor.

Failure of the project inspector to call the attention of the contractor to faulty work or deviations from the contract documents shall not, however, constitute acceptance of said work.

708. UNCOVERING OF WORK

If any portion of the work is covered contrary to the request of the project manager or to requirements specifically expressed in the contract documents, it must, if required in writing by the project manager, be uncovered for the project manager's observation and shall be replaced at the contractor's expense. If any other portion of the work has been covered which the project manager has not specifically requested to observe prior to being covered, the project manager may request to see such work and it shall be uncovered by the contractor. If such work is found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the city. If such work is found not in accordance with the contract documents, the contractor shall pay such costs unless it be found that this condition was caused by the city or a separate contractor, in which event the city or the contractor shall be responsible for the payment of such costs.

709. FIELD ORDERS

After a contract has been awarded, the contractor shall submit any requests for explanation or clarification of the contract documents to the project manager. When the city responds to such requests, it will issue a written explanation ("Field Orders") (Form 10) which shall consist of a written explanation with or without amended drawings. Field orders do not provide for either time extensions or changes in contract prices. If the contractor believes that the field order will require a time extension or extra payment, the contractor shall inform the project manager in writing within ten (10) days of the field order, or the contractor shall be deemed to have waived the right to make the request.

710. SUGGESTIONS TO THE CONTRACTOR

Any plan of action, method of work, or construction procedure suggested to the contractor by any city representative other than the project manager shall be adopted or followed at the sole risk and responsibility of the contractor. This section shall not apply to change orders or field orders which have been duly issued by the project manager.

711. CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by the project manager prior to final payment, and subject to the contractor's right to subsequently dispute the decision of the project manager, the contractor shall promptly, without cost to the city and as specified by the project manager, either correct any defective work, whether or not fabricated, installed, or completed, or, if the work has been rejected by the project manager, remove it from the site and replace it with nondefective work. If the contractor does not correct such defective work or remove and replace such rejected work, all as specified in a written notice from the project manager within a reasonable time, the city may have the deficiency corrected or the rejected work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including without limitation, compensation for additional professional services and costs of additional testing and inspections, shall be paid by the contractor, and an appropriate deductive change order shall be issued. The contractor shall also bear the expenses of making good all work of others destroyed or damaged by the correction, removal, or replacement of its work. The city's failure to reject any material or work at the time of its use in the project shall not constitute a waiver of any rights hereunder. The contractor shall not be entitled to any time extension for performance of the work as a result of the correction of defective work by the contractor or the city.

712. NEGLECTED WORK BY CONTRACTOR

If the contractor should fail to prosecute the work in accordance with the contract, including any requirements of the progress schedule, the city, after seven days written notice to contractor, and subject to the contractor's rights to subsequently dispute the decision of the project manager, may, without prejudice to any other remedy it may have, make good such deficiencies, and the cost thereof (including compensation for additional professional services) shall be charged against contractor, in which case a change order shall be issued incorporating the necessary revisions in the contract including an appropriate reduction in the contract price. If the payments then or thereafter due contractor are not sufficient to cover such amount, contractor shall pay the difference to city.

713. SUBSTANTIAL COMPLETION

"Substantial completion" means that the work is completed to the point that the city may occupy and fully utilize the facilities and no nuisance is created, to the satisfaction of the city. All equipment shall be installed and operational, or temporary arrangements satisfactory to the city shall be made. All performance testing need not be completed prior to the date of substantial completion. The last date for which liquidated damages may be assessed against the contractor for failure to complete work on time shall be the date of substantial completion of the work or designated portion unless otherwise provided in the certificate of substantial completion. The city may, in its sole discretion, choose to allow a portion of the work to be deemed substantially complete prior to substantial completion of all the work.

When contractor considers the work ready for full occupancy or utilization by the city, contractor shall declare in writing to the project manager that the work is substantially complete. Within a reasonable time thereafter, the project manager and contractor shall make an inspection of the work to determine the status of completion. If the project manager does not consider the work substantially complete, the contractor shall be notified in writing giving reasons therefore. If the project manager considers the work substantially complete, the contractor shall receive a "Certificate of Substantial Completion" (Form 12), which shall establish the date of substantial completion and which shall set forth the responsibilities of the city and contractor for security maintenance, heat, utilities, damage to the work, and insurance.. The certificate of completion shall be signed by both the contractor and the project manager and shall include a tentative list of items to be completed or corrected before final acceptance, *see* Section 715, "Final Inspection."

Portions of the work not essential to the city's operation, which can be completed without interruption to the city's operation, may be completed after the work is accepted as substantially complete.

714. PARTIAL UTILIZATION

The city has the right to take possession or use of any completed or substantially completed portions of the work at any time, but such action will not be deemed an acceptance of any work not completed in accordance with the contract documents.

The city's use of any work so identified in the contract documents will not be grounds for extension of the contract time or change in the contract price. The city's use of any work not specifically identified in the contract documents will be in accordance with conditions agreed to prior to such use, and any extra costs or delays in completion incurred and properly claimed by contractor will be equitably adjusted by change order.

Guarantee periods for accepted or substantially completed work, including mechanical and electrical equipment, will commence upon the start of continuous use by the city. The issuance of a certificate of substantial completion for one portion of the work does not indicate final acceptance of the overall work.

715. FINAL INSPECTION

When the work is complete and ready for final inspection, the contractor shall file a written notice with the project manager to that effect. The project manager and the contractor shall then together make a final inspection of the work to determine whether the work has been completed in accordance with the contract documents. Following the final inspection, the project manager shall send the contractor a final inspection report, which shall notify the contractor of any incomplete, unsatisfactory, or questioned work noted by the project manager. Subject to the right to dispute the project manager's final inspection report, the contractor must satisfy any remaining questions or repair or replace the incomplete or unsatisfactory work promptly as directed by the project manager.

If the contractor does not begin to take such action within five (5) days after receipt of notice, or does not pursue such action diligently, the city may, without further notice and without impairing the contract, make other arrangements to have the questions answered and the work completed in a satisfactory manner at the contractor's expense. The contractor shall be liable for any costs so expended by the city, and such costs may be deducted from any payments due or which may become

due to the contractor under the contract. If the contractor contests any such deductions from payments owed the contractor, the contractor must file a written appeal pursuant to section 1254 with the city manager within five (5) days after receiving notice of the pending deduction. The contractor shall not become eligible for final payment from the city until the project manager finally accepts the work by certifying in writing that the work has been completed and that the contractor has passed the final inspection. The contractor shall be deemed to have finally completed the work when the contractor has remedied all deficiencies to the reasonable satisfaction of the project manager and delivered all construction records, maintenance and operating instructions, schedules, guarantees, certificates of inspection, and other documents required by the contract and the city issues a favorable final inspection report (Form 14).

716. PERFORMANCE DURING THE GUARANTEE PERIOD

The project manager will notify the contractor in writing of any damage or defects which are discovered during the guarantee period, and, subject to its rights to dispute such notice, the contractor shall begin to repair or replace any such defects within ten (10) days of receipt of such notice without cost to the city and in conformance with the project manager's written instructions. If the contractor does not begin to repair or replace such damage or defects within ten (10) days of receipt of notice, or does not pursue such action diligently, the city may without further notice and without impairing the contract make the repairs or replacements at the expense of the contractor, or the city may request that the surety repair or replace the defects. If the city manager determines that immediate action is necessary to make repairs or replacements because of emergency conditions or to prevent further loss or damage, the city may proceed without prior notice to the contractor but at the expense of the contractor. In any event, the contractor shall be notified of the situation and of the action taken. If the contractor disputes that it is responsible for the damage or defects, the contractor may appeal to the city manager pursuant to section 125. If the contractor does not deliver a notice of appeal specifying the issues in dispute to the project manager within ten (10) days after the project manager serves notice on the contractor of the defects, the contractor shall be deemed to have waived any right to appeal. In any event, the contractor shall correct the damage or defect as specified in this section, and the question of responsibility for the expense will be determined subsequently by the city manager if an appeal is taken pursuant to section 125.

717. EXTENSION OF THE GUARANTEE PERIOD AND ADDITIONAL BOND REQUIREMENTS

If the city notifies the contractor of any defect in the work, other than a defect resulting from a design error caused by the city or by an A/E hired by the city, or damage or defects caused by abuse, modifications not executed by the contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage, the contractor shall remedy the defect pursuant to section 715. The contractor shall guarantee the replacement work for two (2) years from the date of the city's acceptance of the replacement work. In addition, if the bonds provided for in article 3 expire prior to the expiration of this extended guarantee period, then the contractor shall procure a new bond or bonds to be in effect until the expiration of the extended guarantee period. Such new bonds shall be in an amount equal to the cost of the replacement work which is the subject of the extended guarantee. The new bonds shall meet the requirements set forth in sections 304 through 306 except to the extent that they conflict with this section.

718. GUARANTEE PERIOD INSPECTION

The project manager shall make at least one (1) complete inspection of the work after the work has been accepted, and before the guarantee period expires. This shall be known as the guarantee period inspection. The project manager shall schedule and notify the contractor of this inspection, which shall be made during the last month of the guarantee period. The project manager shall send a written report of the guarantee period inspection to the contractor within ten (10) days after the completion of the inspection. If the report calls for repairs by the contractor, and if the contractor does not begin work to repair or replace the damage and defects within ten (10) days following receipt of this report, or does not pursue such action diligently, the city may, without further notice and without impairing the contract, make the repairs or replacements at the contractor's expense, subject to the contractor's right to dispute the guarantee inspection. If the city manager determines that immediate action is necessary to make repairs or replacements because of emergency conditions or to prevent further loss or damage, the city may proceed without prior notice to the contractor, but at the expense of the contractor. In any event, the contractor shall be notified of the situation and of the action taken. If the contractor disputes that it is responsible for the damage or defects, the contractor may appeal to the city manager pursuant to section 125. In any event, the contractor shall correct the damage or defect as specified in this section, and the question of responsibility for the expense will be determined subsequently by the manager if an appeal is taken pursuant to section 125. The guarantee period inspection report is set forth as Form 19.

719. RIGHT OF OCCUPANCY

At the end of the time for completing the work specified in the contract documents, subject to reasonable insurance requirements contained in policies required by article 3 of the contract, the city shall have the right to take possession of and to use any completed or partially completed portions of the work. If the city possesses any portion(s) of the work or makes regular use of it before the contractor has completed the work, the city shall take all reasonable steps to avoid interfering with the work to be performed by the contractor. If such use or occupancy by the city exposes damage or defects, such damage or defects shall be replaced or repaired by the contractor immediately. The city's possession or use of the work will not be grounds for an extension of the project time or a change in the contract price, except as stated immediately hereafter. When the city partially occupies a facility, it shall share with the contractor the costs of energy to heat and light the facility and the costs of water and sanitary sewer service. The city's share of these costs will be determined by the project manager on an equitable basis, and the contractor will be reimbursed by a change order. The contractor may appeal the project manager's apportionment to the city manager pursuant to section 125.

720. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the project manager prefers to accept defective or non-conforming work, the project manager may do so instead of requiring its removal and correction, in which case a change order will be issued to reflect a reduction in the contract price which will be reduced as appropriate and equitable by a change order or otherwise. Such adjustment shall be effected whether or not final payment has been made. The contractor may appeal the project manager's reduction in the contract price to the city manager pursuant to section 125.

721. CONTRACTOR'S CONTINUING DUTY TO WARN OF DESIGN OR PRODUCT

DEFECTS

The contractor is under a continuing duty to warn the city manager and the project manager of any possible defect in the design of the work and materials incorporated in the work and against potentially unsafe uses of products incorporated in the work which may cause personal injury or property damage, as soon as the contractor discovers the possible defect or has notice that a product may be unsafe. The contractor's duty under this section shall be continuing, and shall not expire until three years after the date of final payment. If the contractor fails to warn the city of a design or product defect of which the contractor is aware, and if personal or property damage thereafter results from such design or product defect, the contractor shall be liable jointly and severally with any other party responsible at law for all damages resulting from such defect.

ARTICLE VIII. CHANGE IN CONTRACT TERMS

801. RIGHT TO CHANGE WORK

The city may order changes by addition, deletion or modification of the work at any time without invalidating the contract. The city reserves the right to contract with any person or entity other than the contractor for any or all extra work authorized by change orders. In the event that the city contracts with a person or entity other than the contractor for such extra work, the city shall be responsible for coordinating the efforts of the contractor and the other person or entity, in order to avoid, insofar as practicable, any interference with the contractor's work.

802. DIFFERING SITE CONDITIONS

The contractor shall promptly, upon discovery, and before the conditions are disturbed, provide written notice to the project manager of any subsurface or latent physical conditions at the site which differ materially from those indicated in the drawings and specifications issued by the city, or unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as being inherent in work of the character provided for in this contract or that could have not been determined at a site investigation conducted pursuant to section 209.

The project manager shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, then the contract price shall be equitably adjusted by a change order as provided in this article 8 upon claim by either party and made within five (5) days after the conditions first become apparent. If the contractor disputes the change order price, the contractor may appeal pursuant to section 125. The contractor shall have the burden to prove that actual conditions under the surface or in an existing building vary materially from those shown in the contract documents and/or that the differing site conditions could not have been discovered at a site investigation conducted pursuant to section 209.

No request by the contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under the contract.

803. FIELD ORDERS

By field order (Form 10), the project manager or project inspector may make minor changes within the scope of the work as long as such changes are reasonable. The contractor is not entitled to extra compensation for such minor changes which are within the scope of the contract, nor is a change order required. Such changes shall be effected by written field order and shall be binding on the city and the contractor. The contractor shall carry out such written orders promptly.

804. CHANGE ORDERS

A change order is a written order from the project manager, issued after the execution of the contract, authorizing a change in the work and a related adjustment in the contract price or the contract time. Only the project manager is authorized to sign a change order. The contract price and the contract time may be changed only by a change order. Any change order signed by both the project manager and the superintendent or any other representative of the contractor shall be considered a part of the contract and subject to every term and requirement of the contract documents. A change order which changes the contract price must be signed by both the project manager and the city manager or the manager's delegate in the purchasing division. No change order shall be issued which causes the aggregate amount due the contractor under this contract to exceed the original contract price unless the city provides the contractor with a written assurance that funds sufficient to cover the cost of the change have been lawfully appropriated. In addition, the department head of the affected city department or departments must sign any change order which cumulatively adjusts the original contract price by more than ten percent (10%). The form of change orders is set forth as Form 9. Any change order waiving any general condition shall be approved by the city attorney. It is the contractor's duty to notify the surety which issues the bonds required by sections 305 and 306 of any changes affecting the general scope of the work or change in the contract price and, if requested by the city, to increase the amount of the bonds accordingly.

If the project manager determines that a change order requires the contractor to do work which is a substitute for other work originally called for in the bid proposal, and if the project manager determines that the change order does not require the contractor to use substantially more materials or labor than were originally called for in the bid proposal, then, and to that extent, the project manager shall not allow the contractor extra compensation. The contractor shall have the right to dispute the project manager's determination.

805. CHANGE IN THE CONTRACT TIME

If the contractor believes that a change order will significantly affect the contract schedule of performance, and require the contractor to spend more time on the project than was earlier anticipated, the contractor shall submit a written request to the project manager for a time extension within ten (10) days after service of the change order. Such requests for time extensions shall be evaluated as set forth in section 405, paragraph B.

806. CHANGE IN THE CONTRACT PRICE

If any instruction of the project manager or any condition of the work appears to the contractor to require a change in the work for which the contractor should receive extra compensation, the contractor shall make a written request to the project manager for a change order. Except for claims

by the contractor arising from design error which is caused by the city or an A/E hired by the city or an agent or employee thereof, no extra compensation shall be authorized for work performed more than ten (10) days before a written request for a change order is received by the project manager. The change order may reflect the agreement of the contractor and the city to a contract price adjustment for the change. On unit price contracts, the change order shall indicate the unit prices which apply. The cost or credit to the city resulting from a change order shall be determined in one or more of the following ways:

- A. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data; or
- B. By unit price adjustments as determined in section 902, "Unit Price Contracts"; or
- C. By actual costs as determined in section 808, "Cost Adjustments for Extra Work."

807. ELIMINATED ITEMS

Should any item contained in the bid proposal be found unnecessary for the proper completion of the work, the city will by change order eliminate such item from the contract, and reduce the contract price insofar as is possible, according to the prices set forth in the bid proposal. If any change order shall cause the loss of any work or materials already furnished by the contractor under the terms of the original contract, the contractor shall be reimbursed for the actual cost of such work, and the net cost of salvaging such materials. The city may purchase any such materials at the actual cost to the contractor. However, the contractor shall be awarded transportation, storage, installation, and salvage costs which have been incurred for eliminated items, provided the contractor can provide invoices or receipts or other evidence that such costs were incurred by it.

808. EXTRA WORK

The contractor may be called upon to perform extra work which is not provided for in the bid proposal or other contract documents, but which is essential to the satisfactory completion of the contract. Extra work is work not provided for in the contract documents but which is found desirable to include in the contract because of timing, mobilization, or other factors. Any extra work authorized by the project manager shall be compensated for and performed under the general provisions of Article 8 of the General Conditions or by mutually satisfactory negotiation, whichever the city deems most appropriate. Once an agreement has been reached between the contractor and project manager, the project manager may issue a Work Directive (Form 8) authorizing the contractor to proceed with the extra work. Work Directives shall serve as the basis for negotiating subsequent change orders.

Should any oral or written order or instructions appear to the contractor to involve extra work for which, in its opinion, it should receive extra compensation and/or time extension, the contractor shall, within ten (10) calendar days of receiving the order or instruction, submit a written request for extra compensation to the project manager. This written request should include the costs for which the contractor feels it should be compensated. If a request is not made within this time period, the contractor shall waive any right to compensation and/or time extension for the extra work. No extra work shall be performed by the contractor until approved by the project manager.

In the event the parties cannot agree on compensation for the extra work, compensation will be paid on a time and materials basis as follows:

A. Labor

The contractor shall receive the rate of wage agreed upon in the bid proposal for all labor employed in performing the extra work. If the extra work requires labor for which the rate of wage was not earlier established in the bid proposal, the contractor will receive the rate of wage agreed upon in writing before beginning the extra work. If the city and contractor are unable to agree upon an acceptable rate of wage before beginning the extra work, the contractor shall perform the work and will be paid at the hourly rates as certified by payroll records, plus 50%. The certified payroll record shall include the employee's hourly rate and all fringe benefits resulting from collective bargaining units (trade unions). The 50% loading factor shall not be applied to the fringe benefits. The 50% loading factor shall include such items as overhead, bonds, insurance, taxes, and profit. Only the employees directly involved in the extra work shall be included. Project superintendents or foremen, who generally direct the extra work but who have overall project responsibilities, shall not be included.

B. Materials

For materials accepted by the city and used in the work, the contractor shall receive the actual cost of such materials, including transportation charges (exclusive of equipment rentals as set forth below). The contractor shall furnish invoices to the city for all materials used and transportation charges. If the materials used in performing the extra work are taken from the contractor's stock, then in lieu of invoices the contractor shall furnish an affidavit, certifying that such materials were taken from its stock, that the quantity claimed was actually used in the work, and that the price and transportation claimed represent the actual cost to the contractor. The contractor shall be paid an additional fifteen percent (15%) of the sum of all materials used to cover overhead and profits, unless otherwise agreed by the parties.

C. Equipment Rental Rates

The contractor shall be paid according to rental rates agreed upon by the parties in writing before the extra work is begun for any machinery or special equipment (other than small tools) necessary for performing the extra work. The rental rates shall include fuel, lubricants, and the costs of transporting the special equipment to the site. Equipment rates shall be charged only for the time the equipment is operating. Standby time shall only be paid when the project manager determines the equipment is needed at the site, but is not operating. Non-listed equipment needed for specific jobs will be paid for at hourly rates for operating time only if agreed to in writing before the work begins.

D. Other Miscellaneous Expenses

The contractor shall be reimbursed for the actual cost of other services or expenditures including, without limitation, as agreed upon by the parties before the extra work is begun, use of materials testing laboratories, employment of design professionals and surveyors, bond premiums, and any other cost directly related to accomplishment of the extra work but

not provided for in other categories in this section. Additional allowance shall not be made for overhead, general superintendence, the use of small tools, further profit, or any other cost for which no specific allowance is provided herein.

E. Sales and Use Taxes

The contractor shall charge and pay to the city all sales and use taxes which accrue from the extra work. The contractor shall not receive final payment for the extra work until the contractor pays all applicable sales and use taxes.

809. NOTICE OF INTENT TO CLAIM

If after receiving a decision from the project manager that a change order will not be issued as requested by the contractor, or the contractor does not agree with the project manager's decision on a change in price or time or the contractor disputes any decisions of the project manager and the contractor intends to submit a claim therefor, the contractor shall submit in writing a notice of intent to claim to the city manager.

The written notice of intent to claim shall be clearly titled as such and all notices shall be numbered sequentially. The notice shall contain the following:

- A. Date of the event giving rise to the claim.
- B. A description of the claim.
- C. The reasons why the contractor believes additional compensation or time is due or charges were wrongly assessed.
- D. An estimate of any additional costs associated with the claim.
- E. The contractor's plan for mitigating costs or delays associated with the claim, if mitigation is feasible.

The notice of intent to claim described above shall be given within ten (10) days after denial of any request for a change in the contract amount or contract time, or within ten (10) days after an informal appeal pursuant to section 125 is denied or deemed to be denied pursuant to that section.

810. SUBMITTAL OF CLAIM

The contractor shall, within twenty (20) days after it submits a notice of intent to claim, submit to the city manager a complete and itemized claim which includes any claimed increase in contract time and contract amount. The contractor may request an extension of time to submit the claim, which extension may be granted by the city manager for good cause shown. The claim must be described in sufficient detail to allow the city manager to evaluate the basis of and costs associated with said claim. A claim for increase in contract amount shall be submitted based on actual costs whenever possible, rather than estimate or opinion, and shall be supported by invoices, time cards, and other business records commonly accepted in the construction industry. The claim shall be accompanied by copies of all contract provisions or other documents relied on and a summary of the factual theories supporting the claim. A claim for time extension must be accompanied by a revised

construction schedule reflecting the effects of the delay on the critical path and showing actions which the contractor has taken or proposes to take to minimize the effects of the delay. The claim shall also identify any reasonable measures the city can take to minimize the claim.

The contractor shall furnish upon request all additional information and data which the city reasonably determines would be needed to aid in resolving the claim through negotiation or which is required to complete an evaluation of the claim. The contractor shall give the city manager access to its books, correspondence, records and other materials relating to the work described in the claim, shall require its subcontractors and suppliers to provide the city with such access, and shall make its personnel and that of its subcontractors and suppliers available to discuss and answer cost, schedule and other questions related to its claim. Clear copies of all necessary supporting records shall be provided to the city at no cost. Failure to submit requested information may be the basis for denial of a claim. However, the city may not deny a claim on the basis of incomplete information if the contractor can convincingly demonstrate that the missing information is in the possession of a Subcontractor or supplier, and, despite the contractor's diligence efforts, the subcontractor has failed or refused to provide the contractor with the information.

The contractor shall submit with its claim a sworn and notarized certificate that:

- A. The claim is made in good faith;
- B. All supporting data are reasonably accurate and complete to the best of the contractor's knowledge and belief as of the time of submitted by the contractor;
- C. The amount requested is not overstated or inflated and fairly and accurately reflects that contract adjustment for which the contractor believes the city is liable, and
- D. To the best of the contractor's knowledge and belief, the prices stated for material and equipment are the lowest reasonably available to the contractor and include all available discounts.

If the contractor is an individual, the certification shall be executed by that individual. If the contractor is not an individual, the certification shall be executed by (i) a senior company official in charge of the work performed under this contract; or (ii) an officer or general partner of the contractor.

The city manager or his designee shall in good faith investigate, review and evaluate the claim and make a determination. Such determination shall normally be made in writing within thirty (30) days of receipt of a completed and fully-documented claim; however, if special circumstances exist or the claim is unusually complex, the contractor will be notified of a longer period not to exceed sixty (60) days.

The contractor shall proceed diligently with performance of this contract, pending final resolutions of any claim made under this section 810, and shall comply with any reasonable decision of the city pending final resolution of the claim. Failure to proceed with the work shall be grounds for suspension or termination of the contractor.

If the contractor agrees with any determination or resolution by the city requiring a change in contract time or amount, it shall be processed as a change order.

Failure to meet any of the requirements of this section in a timely and complete manner shall constitute a waiver by the contractor of any right to adjustments of contract time or amount either by administrative review or by any other action at law or equity.

ARTICLE IX. PAYMENT PROVISIONS

901. CONSIDERATION (CITY'S PROMISE TO PAY)

The city's promise to pay for the work is limited by the city's charter, code, and other ordinances. Furthermore, this contract is only valid to the extent that funds are appropriated and made available therefor, and is void as to any obligations not covered by available appropriations. The city shall pay the contractor only for the contract price as set forth in the original contract, and for additional price adjustments authorized by change orders. The city shall take all necessary action to ensure that sufficient funds are appropriated for all work performed by the construction manager.

902. UNIT PRICES AND ALTERED QUANTITIES

If payments for portions of the work are based on specially identified units of construction rather than on a lump sum price, the contract is referred to as a unit price contract. The number of units of any specific designation set forth in the proposal is an approximation and may not correspond to the number of units actually completed. When the accepted quantities of work vary from the quantities in the contract, the contractor shall be paid, so far as contract items are concerned, at the contract unit prices for the accepted quantities of work done. The contractor shall also set forth unit prices in all subcontracts to which they apply.

Should the final pay quantity of any major contract item increase or decrease by more than twenty percent (20%) from the quantity in the contract, the contract unit price will be adjusted to balance fixed and job indirect costs as by the parties to the contract. A major contract item is any item having an original contract value in excess of ten percent (10%) of the original contract amount. The new unit prices negotiated will be distributed over, and will apply to, the total final pay quantity for the item, and not solely the excessive overrun or excessive under run quantities.

903. PROGRESS PAYMENTS FOR COMPLETED WORK

Before the first application for payment, for a lump sum or cost plus contract, the contractor shall submit to the project manager a schedule of values allocated to the various portions of the work, subject to the project manager's reasonable approval. For portions of the work based on unit prices, the unit prices shall serve as the schedule of values. This schedule shall be used only as a basis for the contractor's application for payment. The contractor shall submit a signed written statement of the <http://www.cmc.org/> total value of the work completed, together with such data or schedules as may be required, at the end of each month to the project manager as an application for payment. The application shall be accompanied by a copy of the contractor's current construction progress schedule with those shop drawing schedules, procurement schedules and other data specified for periodic submission in the special conditions or reasonably required by the project manager. The project manager shall, within five (5) days, either recommend payment or return the application to

the contractor indicating in writing the reasons for refusing to recommend payment. In the latter case, the contractor may make the necessary corrections and resubmit the application. The city shall, within thirty (30) days of presentation to it of an acceptable application for payment, pay the contractor the amount recommended by the project manager. The contractor shall receive progress payments for work authorized by change orders as the contractor completes such work. Ninety percent (90%) of the calculated value for any work completed shall be paid until fifty percent (50%) of the work required by the contract has been performed. Thereafter, the city may pay the remaining installments without retaining additional funds if, in the city's opinion, satisfactory progress is being made in the work and no claims have been made by subcontractors or material suppliers for unpaid work or materials. Pursuant to Section 2-8-9(e), B.R.C. 1981, the city may include other retainage provisions in contracts not covered by state law. All of the funds which have been retained pursuant to this section shall be retained until the work is completed and finally accepted by the city. The contractor warrants that it shall pay each subcontractor promptly upon receipt of payment from the city the amount to which the subcontractor is entitled. Notwithstanding anything to the contrary, the contractor shall not be required to pay a subcontractor or supplier that has not performed in accordance with its subcontract or purchase order. The contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to the subcontractor's sub-subcontractors in similar manner. The city may furnish to each subcontractor information regarding the percentages of completion or the amounts applied for by the contractor.

904. PROGRESS PAYMENTS FOR MATERIALS

The paid invoice price of materials and equipment delivered to the construction site but not yet incorporated in the work may be included as a part of progress payments. Any payment for materials is conditioned upon the contractor's furnishing to the city adequate information to establish the city's title to such materials or otherwise protect the city's interest, including without limitation applicable insurance and transportation to the site for those materials. By submission of a request for a progress payment, the contractor warrants that title to all materials and equipment covered by application for payment will pass to the city either by incorporation in the construction or upon receipt of payment by the contractor, free and clear of all liens, claims, security interest, and encumbrances. The contractor further warrants that no such materials or equipment will be subject to an interest or encumbrance of the seller of such materials or equipment. Payment by the city for such materials and equipment shall not relieve the contractor of responsibility for the care of such materials and equipment, and the city does not assume ownership of the materials or equipment until they are incorporated into the completed work and the certificate of substantial completion is signed by the city and the contractor.

905. PROGRESS PAYMENTS TO SUPPLIERS AND SUBCONTRACTORS

The contractor shall make partial payments of the amount due to each of the contractor's suppliers and subcontractors in the same manner as the city is required to pay the contractor under section 903, provided that the suppliers and subcontractors are performing to the contractor's satisfaction. If the city is notified that the contractor is in arrears in payments to the contractor's suppliers or subcontractors, the project manager shall notify the contractor and determine why such funds are being withheld. If the project manager determines that no legitimate basis exists for the contractor's withholding of such payments, the city may, five (5) days after the mailing of written notice to the contractor, make such payments directly to the contractor's suppliers or subcontractors

from funds which otherwise would be due to the contractor, unless the contractor objects to such payments within said five (5) day period, and provides reasonable documentation to support its position.

906. DISPUTE RETAINAGES

In addition to the retainages set forth in section 903, the city may retain up to one hundred percent (100%) of any disputed line item or portion thereof included in progress payments for any unsatisfactory performance of the work, including without limitation:

- A. Failure to repair or replace defective work.
- B. Claims filed against the contractor, or reasonable evidence indicating that claims may be filed against the contractor.
- C. Failure of the contractor to make adequate payments to subcontractors or suppliers for labor or materials.
- D. Failure to obtain necessary permits or licenses, or to comply with applicable laws, ordinances, codes, rules or regulations, unless such noncompliance is due to reasons beyond the control of the contractor, or due to acts of the city or an A/E hired by the city, or agents or employees thereof.
- E. Failure to satisfy affirmative action and equal employment opportunity requirements.
- F. Failure to maintain an adequate rate of progress.
- G. Failure to maintain the contractor's portion of the work in a clean and orderly manner.
- H. Failure to repair or replace city or private property damaged during the progress of the work.
- I. A reasonable doubt that the contract will be completed for the balance of the contract price then unpaid.
- J. As a set off for amounts due to the city, whether liquidated or unliquidated, including, without limitation, liquidated damages as provided by the contract.
- K. Collusion with other bidders in preparing the bid.

If the reasons for such retainage no longer exist, the city shall make payment to the contractor of the sums withheld pursuant to this section, subject to the amounts required to be retained pursuant to section 903.

907. PAYMENT OF CITY SALES AND USE TAXES

There are two options for payment of city sales and use taxes: A. Estimated Percentage Basis; or B. Monthly payments for holders of a city sales tax license.

If the contractor selects the second method to pay sales and use tax, the contractor and all the subcontractors, after the bid is awarded, must obtain a Boulder Sales and Use Tax License from the city Sales and Use Tax Division, pursuant to Section 3-2-11, B.R.C. 1981.

A. Estimated Percentage Basis

For any contract in which the contract price is \$50,000 or more, the contractor shall pay city construction use tax based upon the following percentages:

Type of contract	percentage of contract amount to which tax is applied
Building construction, landscape installation, Playground installation and construction	50 percent
Construction in the city’s right-of-way, Sewer or water line installation or rehabilitation	30 percent

For such contracts the contractor shall pay the construction use tax to the city based on the contract price at the time it applies for a building or right-of-way permit. Payment of the sales and use tax at this time will give the contractor proof that tax has been paid and therefore, prevent duplicate payment of taxes to suppliers.

At the time that the contractor applies for final payment it must submit Form 15, attached to the general conditions, to the Lead Sales Tax Auditor (“auditor”) for the city. The auditor will determine the total amount paid by the city for the work under the contract, which includes all work performed pursuant to a change order, and compute the total use tax due based on the above percentages. After the total tax payment is received by the city’s Sales and Use Tax Division, it will approve Form 15. At this point the contractor may request an audit by the city in accordance with section 909 rather than paying using the percentage method. Depending upon the determination of the city’s auditor, the contractor will either be refunded use tax by the city or pay the city additional use tax.

For any contract in which the contract price is under \$50,000, the contractor may pay all estimated sales and use taxes due on the work based upon the contract price at the time that the contract is executed. The tax due under this procedure will be the rate in effect during the term of this contract multiplied by fifty percent (50%) of the contract price for building construction, landscape installation, playground installation and construction and (30%) for construction in the city’s right-of-way, sewer or water line installation or rehabilitation.

B. Actual Basis on Monthly Return

If the contractor elects to obtain a Boulder Sales and Use Tax License from the city Sales and Use Tax Division, pursuant to Section 3-2-11, B.R.C. 1981, the contractor will pay the actual use tax due by the 20th day of each month for each purchase of tangible personal property and payment of taxable services made during the previous calendar month. The

contractor shall be granted a credit for Boulder sales taxes paid to a vendor, if any, upon purchase of tangible personal property or taxable services when filing this monthly return, but not for taxes paid to other municipalities. The contractor shall retain a copy of each monthly report as evidence that sales and use taxes have been paid. Under this method, the contractor shall cause each of its subcontractors and suppliers to obtain a Boulder Sales and Use Tax license and to pay the actual sales and use tax which it owes by the 20th day of each month. The contractor shall be liable for the payment of all sales and use taxes which any of its subcontractors or suppliers fails to remit to the city. The permit pulled for this form of payment will not show that Boulder use tax has been paid therefore, by using this form of payment the contractor and its sub-contractors will not have the protection from duplicate taxation. The city will audit the project at completion and will not give credit to taxes paid to other municipalities.

If additional information is required, please *see* Section 3-2-14, B.R.C. 1981 or contact the city's Sales and Use Tax Division at 303-441-3921.

908. PAYMENT OF CITY SALES AND USE TAXES FOR CHANGE ORDERS

The contractor is responsible for payment of all city sales and use taxes paid on additional work authorized by any change order.

909. SALES AND USE TAX AUDITS

In the event a contractor requests a tax audit, the city's auditor will request the following from the contractor and the contractor shall provide this information:

- A. List of all subcontractors and the related information from the contractor.
 - 1. Type of work performed
 - 2. Contract amount
 - 3. Name, address, phone and contact person for the contractor
- B. A copy of the general contractor's job cost reports and related invoices, as well as additional information which may be requested.
- C. The auditor will contact all of the subcontractors by letter requesting job cost information. Also, as a part of the letter to subcontractors, the auditor will request the amount of materials billed to the contractor.
- D. Subcontractors will complete the contractor's letter and return it to the auditor. Rental of equipment is taxable as a cost of the construction project.

If additional information is required, please contact the city's Sales and Use Tax Division at 303-441-3921.

910. REQUIREMENTS FOR FINAL PAYMENT

The contractor shall not receive the final payment due under the contract until the following conditions have been satisfied and the correct forms or certifications have been submitted to the project manager:

- A. The contractor passes final inspection, and the project manager formally accepts the work in writing. Form 14.
- B. The city Sales and Use Tax Form is completed, submitted and signed by the Lead Sales Tax Auditor for the city; Form 15. If additional information is required, please contact the city's Sales and Use Tax Division at 303-441-4017.
- C. Either (1) the contractor files claim releases signed by all suppliers and subcontractors with the project manager certifying that all outstanding claims for payment have been paid (Form 16); or (2) the contractor files conditional claim releases signed by all suppliers and subcontractors from which it has not obtained unconditional claims release and agrees to give the city within ten (10) days after final payment unconditional claims releases from each such subcontractor or supplier or copies of canceled checks showing that each of these subcontractors and suppliers has been completely paid.
- D. The surety on the labor and material bond signs the surety release (Form 18).
- E. The contractor obtains written certification from the surety that final settlement may be made with the contractor and that the performance bond shall be in effect throughout the guarantee period.
- F. The contractor has given the project manager the copy of the contract documents and the as-built drawings which reflect all changes in the work.

911. FINAL PAYMENT PROCEDURE

Prior to receiving final payment the contractor shall make application for final payment following the procedure for progress payments set forth in section 903. The application for final payment shall contain a final estimate of the total value of all work done under the contract. This shall include all extra work performed pursuant to change orders. All prior estimates and payments shall be subject to correction in the final estimate and payment. However, in the absence of error, manifest mistake, or fraud, all estimates, when approved by the project manager, shall be conclusive evidence of the work done and materials furnished. Prior to final payment the project manager will inspect the work and review the application for final payment to determine whether the contractor has fulfilled its obligations under the contract. The project manager will, within five (5) days of receipt of the application for final payment, give written notice to the contractor that the work is acceptable or return the application for final payment indicating in writing the reasons for refusing final payment in which case the contractor shall make the necessary corrections. After making the necessary corrections the contractor shall resubmit its application for final payment which shall be reviewed as outlined above. Final payment shall not be made to the contractor until the city advertises a notice of final settlement at least twice in a newspaper of general circulation in Boulder County at least

ten (10) days prior to the date of final settlement, pursuant to Section 38-26-107, C.R.S. If no claims are filed before final settlement and if the sureties consent pursuant to Form 18, the city shall pay the advertised amount to the contractor, after deducting all payments previously made to the contractor under the contract and all other charges properly chargeable to the contractor under the terms of the contract.

912. PROCEDURE FOR WITHHOLDING ALL OR PART OF FINAL PAYMENT

The city is required to comply with Section 38-26-101 *et seq.*, C.R.S. This statute generally allows a supplier or a subcontractor to file a verified statement of claim, upon which the city is required to withhold funds from the contractor as set forth in the statute. Further, the statute allows unpaid subcontractors and suppliers who have filed verified statements of claim to file a notice of lis pendens with the city, in which event the city must continue to withhold amounts from the contractor longer than ninety (90) days after the date of final settlement.

913. WAIVER OF CLAIMS UPON FINAL PAYMENT

The acceptance of final payment shall constitute a waiver of all claims by the contractor except those previously made in writing and identified by the contractor as unsettled at the time of the final application for payment. The making of final payment shall constitute a waiver of all claims by the city excepting those arising from:

- A. Unsettled liens;
- B. Faulty or defective work appearing after substantial completion;
- C. Failure of the work to comply with the requirements of the contract documents;
- D. Terms of any special warranties required by the contract documents; or
- E. Claims for contribution or indemnification as provided by the contract documents.

ARTICLE X. SUSPENSION AND TERMINATION

1001. SUSPENSION OF WORK BECAUSE OF CONTRACTOR DEFAULT

The project manager may suspend the work or any part of the work without invalidating the contract because the contractor has materially breached any of the contract conditions. A suspension shall not absolve the contractor or the contractor's sureties of any duties or responsibilities except for the performance of the work which has been suspended during the suspension period. If the contractor later resumes work which the city previously suspended because the contractor has materially breached any of the contract conditions, the city shall not be liable to the contractor for additional costs caused by the suspension or for extra start-up costs which result from resuming the suspended work. If the contract is not performed within the time limit set forth due to suspension for the contractor's default, the city shall be entitled to liquidated damages for such delay as set forth in section 406.

1002. SUSPENSION BECAUSE OF ORDER OF STATE OR FEDERAL COURT

In the event a state or federal court order requires suspension of work, the order of suspension shall identify the court order which caused the suspension and shall extend the time limit of the contract by the amount of time specified by the court order. If the court order causes suspension for an indefinite period of time and as a result a time extension cannot be established, the order of suspension will also be for an indefinite period of time. In the event that the contract is suspended for an indefinite period of time, the city may elect to terminate the contract. Should this occur, the contractor shall be paid for all work performed to the date of suspension, and for all other costs which the contractor actually incurs as a result of the suspension. The contractor and the city shall decide which work shall be required to protect completed work and to restore utility service to the area under construction. Payment for such work shall be according to the unit prices listed or, if not specifically covered under the contract, at a price to be determined by the project manager, construction manager, and contractor, in the event that the city elects to terminate the contract because of a suspension due to a court order, arising from the methods or activities of the contractor or its subcontractors in constructing the project, the contractor hereby waives all claims for damages because of such inability to complete the project as planned, including, without limitation, damages for loss of anticipated profits.

1003. SUSPENSION OF THE WORK FOR THE CITY'S CONVENIENCE

The city may at any time and without cause suspend the work or any portion thereof by written change order which shall fix the date upon which work on the project shall be recommenced and state that the suspension is expressly for the city's convenience. If the suspension applies to only a part of the work, a time extension will be authorized based on the project manager's estimate of the delay to the entire project caused by the partial suspension. Liquidated damages will not be assessed by the city during the extended period caused by suspension for the city's convenience under this section. In all cases of suspension for the city's convenience, a price adjustment will be made by the project manager by change order to reflect the reasonable, demonstrable cost to the contractor of the suspension. The contractor shall consult with the project manager about the cost of suspension, if the project manager so requests. Equipment rates shall be charged only for the time the equipment is operating. Standby time shall only be paid when the project manager determines the equipment is needed at the site, but is not operating. Upon receiving such an order of suspension, the contractor shall immediately protect and maintain the work in a condition which will permit its resumption for the least possible start-up cost. If the city wrongfully suspends the contract, this shall be treated as a suspension of the work for the city's convenience. If a portion of the work is suspended for more than three (3) months by the city, the contractor may then terminate that part of the contract. Contractor shall have the right to dispute any decisions made by the project manager.

1004. CITY MAY TERMINATE THE CONTRACT FOR CAUSE

Without prejudice to any other right or remedy, the city may terminate the contract or reassign all or any portion of the work pursuant to section 1006 for any of the following reasons:

- A. The contractor assigns work to be performed under the contract without the written permission of the project manager.

- B. A petition for bankruptcy is filed relating to the affairs of the contractor. As used in this section 1004, “contractor” shall be deemed to include the contractor, or any of its officers, employees or major shareholders possessing at least ten percent (10%) of the contractor’s equity.
- C. A general assignment of the contractor’s assets is made for the benefit of the contractor’s creditors or any of the funds due to the contractor under this contract are assigned for the benefit of the contractor’s creditors.
- D. A trustee or receiver is appointed for the contractor or any of the contractor’s property.
- E. The work is being unjustifiably delayed by the contractor, including allowance for any time extensions.
- F. The city learns that the contractor has been guilty of collusion with other bidders in preparing the bid.
- G. A surety which has bonded the contractor for the work becomes insolvent, bankrupt, or loses its right to do business in the State of Colorado, and the contractor does not provide a substitute bond within the time set forth in section 304.
- H. The contractor refuses or fails to supply enough properly skilled workers or proper materials, unless it can convincingly demonstrate to the city that such workers or materials cannot be obtained by exercising reasonable diligence.
- I. The contractor fails to make proper payment to subcontractor or suppliers.
- J. The contractor breaches any of the conditions of the contract or executes the contract in bad faith or otherwise not in accordance with the terms of the contract.
- K. The contractor disregards any law, ordinance, regulation, rule, or order of any public body having jurisdiction.

If the city lawfully terminates the contract and reassigns all or any portion of the work, the city may take possession of the work and of all materials thereon owned by the contractor and finish the work by whatever method it may deem expedient. In the event of such a default the city shall give the contractor ten (10) days written notice and the opportunity to cure such default. In the event of termination, the contractor shall not be entitled to receive any further payment until the work is completed and accepted. The contractor and the contractor’s surety shall reimburse the city for all expenses sustained by the city in completing the contract, including, without limitation, administrative expense and other expenses incurred even if they exceed the contract price, but not including extra which is authorized after the termination. Where the contractor’s services have been so terminated or reassigned by the city, said termination shall not affect any rights of the city against contractor then existing or which may thereafter accrue. Any retention or payment of moneys by the city due the contractor shall not release the contractor from liability.

1005. CONTRACTOR SHALL NOTIFY CITY OF CERTAIN EVENTS

The contractor shall notify the project manager of the following events:

- A. Any of the events described in subsections A, B, C or D of section 1004.
- B. Any change in the contractor's legal relationship with the surety which may affect the contract.
- C. Bankruptcy or insolvency of the surety, or any other event which prevents the surety from doing business in the State of Colorado.
- D. Assignment of any of the funds due to the contractor under the contract.
- E. Any adverse occurrence which may materially affect the contractor's ability to perform this contract.
- F. Proceedings which could lead to the revocation of any of the licenses which are necessary for the contractor to perform work under the contract.
- G. Grant of a security interest by the contractor in any of the materials or equipment to be incorporated into the work to any third party.
- H. Violation by any subcontractor or supplier of any of the terms of the contract, or occurrence of any event listed in subsections A through G above with respect to a subcontractor or supplier.

1006. CITY MAY REASSIGN THE WORK

If the contractor remains in breach of any of the conditions of the contract after all applicable cure periods have expired, the city may reassign any part of the contract to another party in lieu of terminating the contract. Such reassignment shall not lessen any of the contractor's responsibilities to perform the work on any part of the contract which was not reassigned. The contract price shall be decreased in proportion to the amount of the work which was reassigned. In the event that the city reassigns work, the city may deduct from payments due to the contractor and may claim against the contractor for costs incurred by the city, including without limitation reasonable attorney fees in effecting the reassignment.

1007. CONTRACT TERMINATION FOR REASONS BEYOND THE CONTROL OF THE CONTRACTOR OR THE CITY

In the event that the work cannot be completed within the time set forth in the contract because of conditions or circumstances beyond the control of either the city or the contractor, such as, without limitation, an executive order of the president of the United States with respect to the prosecution of war or in the interest of national defense or an order of any state or federal court prohibiting the construction of the project, the city, acting by and through its city manager and project manager, may terminate the contract or any portion thereof by giving at least seven (7) days written notice to the contractor. When the contract is terminated under this section before completion of the work in the contract, payment will be made for the actual items of work completed at the contract price. For

items which are only partially completed, the city shall pay for the portion of the item actually completed. The contractor also shall be awarded compensation for costs associated with materials which must be returned, rental contracts which the contractor has entered into but may not terminate, and other reasonable costs which the contractor legitimately incurs as a result of the termination. If the contractor disputes the project manager's valuation of work completed, the contractor may appeal pursuant to section 125. Acceptable materials, obtained or ordered by the contractor for the project but not yet incorporated in the work at the time of such termination, may at the option of the city be purchased from the contractor at actual cost as shown by receipted bills and actual cost records at the point of delivery. The intent of this section is to provide a method of equitable settlement with the contractor in the event of termination of the contract because of conditions or circumstances beyond the control of either the city or the contractor. It is also intended by this section that a settlement for the work performed shall not relieve the contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work nor for payment for labor and materials as guaranteed by the surety bond or bonds.

1008. TERMINATION OF CONTRACT FOR CONVENIENCE

The performance of work under this contract may be terminated by the city in whole or in part whenever for any reason, in its sole discretion, the city shall determine that such termination is in the best interest of the city or whenever the city is prohibited from completing the work because of conditions beyond the control of either the city or the contractor. Such termination shall be effected by giving not less than three (3) days written notice to the contractor specifying the extent to which performance of work under this contract is terminated and the date upon which such termination becomes effective.

Upon receipt of notice of such termination, the contractor shall:

- A. Stop work as specified in the notice;
- B. To the fullest extent possible, terminate all orders and subcontracts except as necessary to complete work which is not terminated;
- C. If directed by the city, assign all right, title and interest in subcontracts and materials in progress, as long as the contractor is released from all prospective liability to subcontractors and suppliers, in which case the city will have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such subcontracts;
- D. Negotiate or otherwise settle outstanding liabilities and claims with the approval of the city or its designated representative and, upon receipt of all payments due from the city for termination for convenience, pay the amounts that were agreed upon in the settlements;
- E. Complete performance of such part of the work as has not been terminated; and
- F. Take such other actions as may be necessary, or as may be directed by the city, for the protection and preservation of the property related to the contract.

Except as provided above, any inventory resulting from the termination of this contract may, with written approval of the city, be sold or acquired by the contractor under the conditions prescribed by and at prices approved by the city. Upon receipt of the notice of such termination, the contractor shall submit to the city a request for payment of its termination costs, in the form and with any reasonable certification prescribed by the city. Such request shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless extended in writing by the city upon the written request of the contractor within such six (6) month period. If the city determines that the facts justify it, a request may be received and acted upon after six (6) months.

The contractor shall be entitled to receive reimbursement for the reasonable cost of the work as of the date of termination, including a release of retainage. The city will additionally reimburse the contractor for other reasonable costs resulting from said termination such as restocking charges and protection of the work. The contractor shall not be entitled to loss of other anticipated profits, profits lost on other work not obtained or any other consequential damages, or any reimbursement for any costs incurred due to the contractor's fault or failure to mitigate as a result of any such termination for convenience, and in no event shall the total sums paid the contractor exceed the contract price.

In arriving at the amount due the contractor under this section, there shall be deducted:

- A. All unliquidated advance or other payments theretofore made to the contractor, applicable to the terminated portion of this contract;
- B. Any claim which the city may have against the contractor in connection with this contract;
- C. The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired or sold by the contractor or sold pursuant to the provisions of this article not otherwise recovered by or credited to the city; and
- D. Any outstanding subcontractor claims.

The city may, from time to time, under such terms and conditions as it may prescribe, authorize partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if it is estimated that the total of such payments will not exceed the amount to which the contractor will be entitled. If the total of such payments is in excess, the excess shall be payable by the contractor to the city upon demand.

A settlement for the work performed shall not relieve the contractor or its surety from responsibility for defective work and/or materials on the completed portion of the work or for the payment of labor and materials as guaranteed by the payment and performance bonds.

Upon reasonable notice to the contractor the city shall be given full access to all books, correspondence, records and other materials of the contractor relating to this contract in order to determine the amounts to be paid on account of the termination of the contract. The contractor shall, as requested by the city furnish clear copies of any such materials.

1009. CITY SHALL HAVE ACCESS TO CONTRACTOR'S RECORDS

Upon reasonable notice to the contractor the project manager shall be given full access to all books, correspondence, and papers of the contractor which are necessary to determine the amounts to be paid on account of the termination of the contract, or for any other application for payment made by the contractor, or to determine the amounts paid by the contractor to subcontractors or suppliers or their agents, employees, or assigns.

1010. ACCOUNTING OF COSTS AND AUDIT

Contractor shall keep and maintain and shall contractually require its subcontractors and outside consultants to keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect all costs incurred pursuant to this contract, including costs which may be the basis of a contractor's request for a change in the contract or a claim by the contractor. Such records shall include the bid estimate and all bid work papers and take-offs, receipts, memoranda, vouchers, and accounts of every kind and nature pertaining to the performance of the work, including, but not limited to, job cost ledgers, invoices from and payments to subcontractors and material suppliers, records of home and field office overhead, as well as complete summaries and reports setting forth all reimbursable personnel-hours expended and payroll and equipment records. All such records shall be kept for three (3) years from the date of final completion.

The city and any firm of auditors retained by the city shall have access, upon reasonable advance notice in writing, to all such records maintained by contractor and its subcontractors and consultants, for the purpose of auditing and verifying contractor's costs or any other costs claimed to be due and payable hereunder.

The contractor shall include in all subcontracts, consulting agreements and any other agreements entered into by contractor for the performance of the work a provision to the effect that its subcontractors, consultants or other parties shall observe and comply with all the obligations of contractor under this provision in the same manner and to the same extent as the contractor.

1011. CONTRACTOR MAY TERMINATE THE CONTRACT

The contractor may terminate the contract for any of the following reasons:

- A. The work is suspended for more than three (3) months by the city for its own convenience under section 1003 or by an order of a court or other public authority, provided the suspension does not result from an act or omission of the contractor.
- B. The project manager fails to act on a properly completed and substantiated application for payment within twenty (20) days after it is submitted by the contractor.
- C. The city fails to issue a check or warrant to the contractor within thirty (30) days after payment is approved by the project manager.

If any of these conditions exist, the contractor shall, ten (10) days after service of written notice on the project manager, terminate the contract. The city shall have the right to remedy and/or cure the problem prior to expiration of the 10 day period. In such event, the contractor shall be entitled to payment for all work executed based on the proportion of the work completed. When the contract is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed at the contract price. For items which are only partially completed the city shall pay for the portion of the item actually completed. The contractor may appeal such determination pursuant to section 125.

1012. CONTRACTOR MAY SUSPEND WORK

In lieu of terminating the contract under section 1011, if the city fails to issue a check or warrant for payment more than thirty (30) days after approval by the project manager, the contractor may, seven (7) days after service of notice on the project manager, suspend the work until payment is received. If the contractor makes such election and later resumes the suspended work, the city shall be liable to the contractor for extra start-up costs which result from resuming the suspended work.

1013. NO ARBITRATION

Except as may otherwise be provided in the special conditions or by law, or agreed to by the city, no claims, disputes, or other disagreements arising out of the contract or work performed under the contract shall be decided by arbitration. If at any time during the performance of the work the city and contractor agree to submit a dispute to arbitration, then the dispute shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Unless otherwise agreed in writing, the contractor shall carry on the work and maintain its progress during the arbitration proceedings, and the city shall continue to make payments to the contractor in accordance with the contract documents.

1014. MEDIATION

If disputes remain unresolved after negotiations between the city and the contractor, the parties shall submit the disputes to nonbinding mediation. The mediator shall be a trained mediator with experience on municipal construction projects. The parties shall attempt to jointly select the mediator from a list of proposed mediators generated by the parties. The parties may seek the assistance of the American Arbitration Association in generating a list of potential mediators. In the event that the parties are unable to agree on a mediator, the Chief Judge of Boulder District Court should appoint one. Each party shall bear its own costs associated with presenting any disputes to the mediator, which costs shall not be recoverable as part of a change order or in any subsequent litigation or arbitration.

No decisions or statements of the mediator may be admitted as evidence in any subsequent litigation or arbitration between the parties nor may the mediator be called to testify in any litigation or arbitration between the parties concerning such disputes.

The submittal of disputes to non-binding mediation shall be a condition precedent to commencing litigation or arbitration by either party.

In the event any dispute, mediation, arbitration, or litigation arises under this contract and during the time such dispute, mediation, arbitration, or litigation is pending, the contractor shall continue performance under this contract in accordance with the terms and conditions hereof. The failure of the contractor to continue expeditious performance due to a dispute arising under this contract shall, at the option of the city, be construed as a material breach of this contract justifying termination or such other action as the city deems appropriate.

APPENDIX 1: DEFINITIONS

1. Abnormal Weather. Snowfall, rainfall, freezing temperatures, or excessive wind conditions, which cause a delay in the contractor's performance. *See* section 405(C).
2. Addenda. Written or graphic instruments issued prior to the execution of the contract agreement which modify or interpret the contract documents by additions, deletions, clarifications, or corrections.
3. Architect or Engineer (A/E). As used herein, AA/E@ refers to an architect or engineer hired by the city to design or supervise the work. The duties of the A/E are set forth further in section 113. The contractor may only rely on instructions or communications issued by the project manager and may not rely on instructions or communications of the A/E, unless they are ratified in writing by the project manager.
4. Bid Bond. The security furnished by the bidder as a guarantee of good faith to enter into a contract with the owner if the work is awarded to him. The bid bond is set forth as Form 1.
5. Bidder. Any individual, firm, or corporation submitting a proposal for the advertised work.
6. Bidding Instructions. The instructions set forth in article 2 herein.
7. Bid Proposal. The form supplied by the city for the submission of bids. The bid proposal, special conditions, contract agreement, and drawings and specifications are bound in one volume, pursuant to section 212.
8. Boulder Revised Code (B.R.C.). The Boulder Revised Code, which is referred to herein as "B.R.C. 1981," is the code of ordinances adopted by the City of Boulder. This code may be reviewed at the Boulder Public Library, which is located at 1000 Canyon Boulevard, Boulder, Colorado and is also available on line at www.bouldercolorado.gov.
9. Calendar Day. Any day of the week, including Saturdays, Sundays, and city-observed holidays.
10. Calendar Week. A week which begins on Monday and ends on Sunday.
11. Change Order. A written order, set forth as Form 9, issued by the project manager to the contractor, covering changes in the plans or quantities within the scope of the contract and establishing the basis of payment and time adjustments for the work affected by the changes. The contract price and the contract time for performance may only be amended by a change order signed by the project manager.
12. City. This term shall mean the City of Boulder, Colorado, a municipal corporation organized under and by virtue of Article XX of the Constitution of the State of Colorado.
13. City Attorney. The city attorney of the City of Boulder, Colorado, who must sign the contract agreement for it to be effective, and alone has authority to authorize changes to the

general conditions of the contract. The city attorney may be contracted at Office of the City Attorney, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3020.

14. City Manager. The city manager of the city of Boulder, Colorado, who alone has the authority to solicit bids for a contract and must sign the contract agreement for it to be effective. The contractor may appeal decisions by the project manager to the city manager pursuant to section 125, as set forth in the general conditions. The city manager may be contacted at the Office of the City Manager, P.O. Box 791, Boulder, Colorado 80306; telephone 303-441-3090.
15. Colorado Revised Statutes (C.R.S.). The Colorado Revised Statutes, which are referred to herein as A.C.R.S., are the statutes adopted by the State of Colorado. If necessary, the contractor may review these statutes at the Office of the City Attorney, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3020.
16. Construction Bonds. The approved form of security, executed by the contractor and the contractor's surety(s), which guarantee complete execution of the contract and all supplementary agreements pertaining thereto, and the payment of all legal obligations pertaining to the performance of the work.
17. Contract. The entire agreement between the contractor and city. The term is used generally, and does not refer to any particular document.
18. Contract Agreement. The written agreement between the city and the contractor who has been awarded the bid. The contract agreement set forth in Form 5.
19. Contract Completion Date. The contract completion date shall be the day that the contractor passes final inspection, as set forth on Form 14. See section 715.
20. Contract Documents. All written documents which define the construction work and the obligations of the city and contractor in performing the work. The contract documents consist of the materials set forth in section 103.
21. Contract Performance Period. The contract performance period runs from the date the notice to proceed is issued until the certificate of substantial completion (Form 12) is issued by the project manager.
22. Contract Price. The amount which the contract agreement states the city shall pay the contractor for its work under this contract, as that amount may be adjusted by change orders.
23. Contractor. The individual, firm, or corporation with whom the city contracts for the performance of the work. This term also means the construction manager.
24. Day. As used herein, the term "day" shall apply to a day between Monday and Friday, excluding Saturdays, Sundays, or city-observed holidays.
25. Default. A breach of the contract term(s) and conditions.

26. Drawings and Specifications. All documents approved by the city for the purpose of describing the work under the contract. *See* sections 107, 120, and 206 for further information.
27. Extra Work. Work not provided for in the contract documents but found desirable to include in the contract because of timing, mobilization, or other factors. *See* section 808.
28. Field Orders. A writing issued by the project manager to explain or clarify any of the drawings and specifications or other contract documents. The contract price or period for performance can not be amended by a field order. *See* section 709 and Form 10.
29. Final Settlement. The date of final settlement shall be the day upon which the project manager authorizes final payment to the contractor. The date of final settlement may be the same date as the contract completion date (*see* definition (19) herein), but may not occur before the contract completion date.
30. Finance Director. The finance director of the City of Boulder, Colorado, who must sign the contract agreement for it to be effective. The finance director's duties are outlined further in the general conditions. The finance director may be contacted at the Office of the Finance Director, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3042.
31. General Conditions. The sections set forth in this document. The general conditions may be amended by the city attorney.
32. Growing Season. The growing season for plant materials planted or altered by the contractor (*see* sections 617 and 618) shall begin April 1 and end August 31.
33. Laws. As used herein, "laws" shall include, without limitation, all applicable federal, state, and city codes, charters, ordinances, standards, statutes, rules, and regulations.
34. Notice of Award. The document which certifies that the contractor has been selected to perform the work. *See* section 301 and Form 4.
35. Notice to Proceed. The date of purchase order issued by the purchasing agent is the official notice to proceed. It shall be the beginning date of the contract for purposes of determining the contract performance period and liquidated damages.
36. Project Inspector. An authorized representative of the city assigned to make inspections of the work performed and the materials furnished by the contractor. The inspector's duties are outlined further in article 7. The inspector has no authority to vary any of the terms of the contract documents.
37. Plans. All city-approved drawings or reproductions pertaining to the construction of the work and appurtenances thereof.
38. Project. The entire work which the contractor has been hired to perform under the contract documents. The project shall be identified by a project number. The project shall also include extra and force account work.

39. Project Manager. The city employee who shall supervise the implementation of the contract and represent the city in all matters and questions arising under the contract. *See* section 111. The project manager's duties are also set forth further in other sections of the general conditions.
40. Purchase Order. The purchase order is the document issued by the city purchasing department which commits the payment of city funds for the work. The purchase order is also the notice to proceed, which is the official beginning date of the contract.
41. Purchasing Agent. An employee of the city purchasing division. The purchasing agent's signature is required on the contract (Form 5) and on all change orders (Form 9) in which the contract price is adjusted. The purchasing agent may be contacted at the Purchasing Department, P.O. Box 791, Boulder, Colorado 80306; telephone, 303-441-3060.
42. Special Conditions. Additions or revisions to the general conditions which refer to special aspects of particular contracts. In case of conflict, special conditions supersede general conditions, pursuant to section 105.
43. Specifications. A general term applied to all directions, conditions, requirements, and written agreements which pertain to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.
44. Subcontractor. An individual, firm, or corporation to whom the contractor sublets part of the contract but not including one who only furnishes material.
45. Substantial Completion. The date of substantial completion of the work or designated portion thereof is the date certified by the project manager when construction is substantially complete in accordance with the contract documents. *See* Form 12 and section 713.
46. Superintendent. The individual designated by the contractor to act on behalf of the contractor in all matters related to the contract. Unless otherwise agreed, the superintendent shall serve on a full time basis. *See* section 507.
47. Surety. The corporation, partnership, or individual, other than the contractor, which executed a bond or bonds with the contractor guaranteeing the complete execution of the contract and all supplementary agreements pertaining thereto.
48. Work. The completed construction required by the contract documents including all labor, materials, and equipment necessary to produce such construction. Work not covered by the contract documents will not be required unless it is consistent therewith and is reasonably necessary to produce the results intended in the contract documents.
49. Work Directive. A Work Directive, set forth in Form 8, authorizes the contractor to proceed with the extra work. Work Directives shall serve as the basis for negotiating subsequent change orders.

50. Work within the Scope of the Contract. Work which is identified in the bid proposal or other contract documents or which is not identified in the bid proposal or other contract documents but which is necessary for satisfactory prosecution and completion of the work is work, within the scope of the contract. The contractor will not be awarded extra compensation or a time extension for performing work which is within the scope of the contract.

51. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail to the last business address known to the party who gives the notice.

APPENDIX 2: CONSTRUCTION FORMS

Form 1	Bid Bond
Form 2	Contractor/Subcontractor Qualification Form
Form 3	Contractor/Subcontractor Verification Form
Form 4	Notice of Award
Form 5	Contract for Construction in the City of Boulder, Colorado
Form 6	Performance Bond
Form 7	Labor and Material Bond
Form 8	Work Directive
Form 9	Change Order
Form 10	Field Order
Form 11	Application for Payment
Form 12	Certificate of Substantial Completion
Form 13	Certificate of Occupancy
Form 14	Final Inspection Report
Form 15	Payment of Boulder Sales and Use Tax
Form 16	Claim Release
Form 17	Affidavit that All Claims are Satisfied
Form 18	Surety's Consent to Final Payment
Form 19	Guarantee Period Inspection Report
Form 20	Proposed Subcontractors
Form 21	Schedule of Manufacturers and Suppliers

[Form 1]

BID BOND

Witness:

_____, as principal, hereinafter called the “bidding contractor,” and _____, as “surety,” a corporation properly organized under the laws of Colorado or authorized to do business in Colorado, hereby obligate themselves to the City of Boulder, as obligee, hereinafter called the “city,” in the penal sum of _____ dollars (\$_____), which penal sum shall secure the obligation of the bidding contractor to enter into contract with the city for the work associated with

_____.

Project Number _____, if the bidding contractor is so selected by the city.

If the city accepts the bid of the bidding contractor, and if the bidding contractor properly executes a contract with the city to perform the work covered by the award, then this obligation shall be null and void.

In the alternative, if the bidding contractor refuses to enter into contract with the city for work described in the bid, but rather pays to the city the difference between the bidding contractor’s stated bid amount and the actual amount bid by an alternate bidding contractor, who is accepted by the city, then this obligation shall be null and void.

EXECUTED on this _____ day of _____, 20____.

(Contractor)

By: _____
(President)

(Surety Company)

By: _____
(Attorney-in-Fact)

[Form 2]

CONTRACTOR/SUBCONTRACTOR QUALIFICATION FORM

I. General Information

Your Company:

Name: _____

Address: _____

How long have you been in business? _____

How long have you been in business under the present business name? _____

What former name(s), if any, has your company operated under in the past five (5) years?

What is the largest contract you have been awarded in the past twelve (12) months?

II. Information: Previous Construction Contract

Provide the following information for three (3) contracts you have performed, or are currently performing, within the past five (5) years. At least two (2) contracts must be completed. If you have performed any contract with the City of Boulder, or County of Boulder, or State of Colorado, include information about the least one (1) such contract.

Contract 1

Owner _____

Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____

Name

Address

Phone

Surety for Performance Bond: _____

Address

Phone

Surety for Labor and Material Bond: _____

Address

Phone

Insurance Company: _____
Name

Address

Phone

Major Subcontractor: _____
Name

Address

Phone

Major Supplier: _____
Name

Address

Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

* * * * *

Contract 2

Owner _____
Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____
Name

Address

Phone

Surety for Performance Bond: _____

Address

Phone

Surety for Labor and Material Bond: _____

Address

Phone

Insurance Company: _____
Name

Address

Phone

Major Subcontractor: _____
Name

Address

Phone

Major Supplier: _____
Name

Address

Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

* * * * *

Contract 3

Owner _____
Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____
Name

Address Phone

Surety for Performance Bond: _____

Address Phone

Surety for Labor and Material Bond: _____

Address Phone

Insurance Company: _____
Name

Address Phone

Major Subcontractor: _____
Name

Address Phone

Major Supplier: _____
Name

Address Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

III. Describe the work you normally perform with your own forces:

- IV. Have you, or any officer or partner of your organization, when working for another organization, failed to complete any work awarded to you or such officer or partner? If so, attach a separate sheet of explanation.
- V. Are there any claims or law suits against your organization, against predecessor organizations of your organization, or against any officer or partner who currently works for your organization which have been brought during the previous five years? If so, attach a separate sheet of explanation.

VI. Resumes

Provide resumes for at least two (2) persons with your company. One resume should be for an officer of the company: president, vice-president, etc. The second resume should be for an operations manager of the company who has had experience directing a job as a contractor or superintendent. An operations manager may also be an officer of the company.

Officer: _____
Name

Operations Manager: _____
Name

VII. Trade References:

- 1.
- 2.
- 3.
- 4.
- 5.

VIII. Bank References:

- 1.
- 2.
- 3.
- 4.
- 5.

IX. Name of Bonding Company and name and address of agent:

- X. Attach a financial statement, audited if available, (consolidated if the contractor is part of an affiliated group), including contractor's latest balance sheet and income statement showing the following items:
- A. Current Assets (*e.g.*, cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses):
 - B. Net Fixed Assets:
 - C. Other Assets:
 - D. Current Liabilities (*e.g.*, accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries, and accrued payroll taxes):
 - E. Other Liabilities (*e.g.*, capital, capital stock, authorized and outstanding shares par values, earned surplus, and retained earnings):

Name of firm preparing financial statement and date thereof:

Is this financial statement for the identical organization named in Part I on page one? _____

If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (*e.g.*, parent-subsiary).

Will this organization act as guarantor of the contract for construction?

[Form 3]

CONTRACTOR/SUBCONTRACTOR VERIFICATION FORM
(For Internal Use Only)

Name of Contractor

Name of Owner of Project

I. Project History

Contact the following parties to determine their evaluation of the contractor or subcontractor (hereinafter referred as “contractor”).

1. Owner _____ Date Contacted _____

Are you satisfied with the work? yes _____ no _____

Would you contract with this contractor again? yes _____ no _____

2. Architect _____ Date Contacted _____

Are you satisfied with the contractor’s performance of the work? yes _____ no _____

Are there any lawsuits, claims, or disputes which have resulted from this contract, or which are now pending, or from any other contract with the contractor on which you were the architect?

Would you work with this contractor again in the future? yes _____ no _____

3. Surety: Performance Bond

Are there any outstanding lawsuits, claims, or disputes which resulted from this contract, or which are now pending, or from any other contract on which you were a surety for this contractor?

6. Subcontractor

Name

Date Contacted

Have you been completely paid? yes _____ no _____

Are there any outstanding lawsuits, claims, or disputes which resulted from this project, or which are now pending, or from any other work performed for this contractor?

Would you work for this contractor again on a future project? yes _____ no _____

7. Supplier

Name

Date Contacted

Describe the materials you supplied to the contractor:

Were you paid promptly? yes _____ no _____

Are there any outstanding lawsuits, claims, or disputes which resulted from this or any other project on which you have provided materials for this contractor?

II. Evaluation

Contractor is Approved: yes _____ yes, but with reservation _____ no _____

Need Further Information: _____

[Form 4]

NOTICE OF AWARD

DATE: _____

FROM: _____

TO: _____

Project Number: _____

This notice certifies that the contractor listed above has been selected to perform the work. The beginning date of the contract shall be the date the purchase order is issued, which shall be the official notice to proceed.

Signed:

Project Manager

Date

Contractor

Date

CONTRACT AGREEMENT FOR CONSTRUCTION
IN THE CITY OF BOULDER, COLORADO

This Agreement, made and entered into this ____ day of _____, 20____, between the City of Boulder, Colorado, hereinafter called the "city," and _____, hereinafter called the "contractor." The city and the contractor, for the consideration hereinafter named, agree as follows:

Part One: The Contract Documents

The contract documents consist of this contract agreement, the general conditions, the special conditions, the bid proposal, the drawings and specifications, and change orders, addenda and other documents which may be required or specified.

Part Two: The Work

The contractor shall perform all the work required by the contract documents as specified by Bid No. _____ and Addenda No. _____, attached hereto.

Part Three: Liquidated Damages for Failure to Complete Work on Time

The contractor hereby agrees to be liable for liquidated damages in the sum of _____ DOLLARS (\$ _____) per day for each and every day that substantial completion of the work is delayed past the established time limit or limits, including due allowance for any extension of time agreed to by the city. The liquidated damages herein specified shall only apply to the contractor's delay in performance, and shall not include litigation or attorneys' fees incurred by the city, or other incidental or consequential damages suffered by the city due to the contractor's performance. If the city charges liquidated damages to the contractor, this shall not preclude the city from commencing an action against the contractor for other actual harm resulting from the contractor's performance which is not due to the contractor's delay in performance.

Part Four: Contract Price

The city shall pay the contractor in current funds for the performance of the work, subject to additions and deductions by change order as provided in the contract documents, the contract price of _____ DOLLARS (\$ _____), as set forth in the bid proposal of the contractor dated _____, as amended by _____, dated _____.

Part Five: Appropriations

[mark the clause or clauses which apply]

The city has appropriated funds to pay the contractor for its work under this contract that are equal to or greater than the contract price stated above. (To be used for construction projects that are scheduled to be completed within one fiscal year.)

The amount of funds appropriated to pay the contractor for its work under this contract is \$ _____. Before the contractor commences any work for which the city has agreed to pay a sum in excess of the appropriated amount stated above, the city shall provide the contractor with a written assurance that funds equal to or in excess of the additional sum have been lawfully appropriated. (To be used for phased construction projects occurring over more than one fiscal year where funds sufficient to pay the full contract price are expected to be appropriated by the city for fiscal years subsequent to the one in which the work commenced.)

[] The funds to be used to pay the contractor for its work under this contract have been raised by issuing bonds. Appropriations by the city to pay the debt on those bonds may occur subsequent to the date of this contract. The city shall provide the contractor with a written assurance that each such appropriation has been lawfully made shortly after it occurs. (To be used for construction projects funded by bonded indebtedness.)

Part Six: Affidavit of Compliance with Affirmative Action Requirement

The contractor has read a copy of Section 12-1-3, B.R.C. 1981, which relates to nondiscrimination, and agrees to comply with its terms so long as the contractor is under contract with the city.

Part Seven: Warranty of NonCollusion

By executing this contract, the undersigned warrants that:

- 1) The contractor has not allowed any competing bidder or employee or agent thereof to see the contractor's bid or to know of its contents.
- 2) The contractor has not discussed the contents of its bid with any competing bidder, or any other person who a reasonably prudent person would believe would be likely to transmit information to a competing bidder.
- 3) The contractor has drafted its bid independently of any competing bidder.

Failure to abide by the above provisions relating to collusion shall render the contractor liable to the city for damages including, without limitation, payment of the bid bond as liquidated damages. In addition, the city may void any contract entered into with a bidder guilty of collusion. If the bidder has engaged in any practice which might be suspected to be collusive, please explain below:

Part Eight: Addresses of Contracting Parties

Correspondence may be sent to the following addresses:

City/Project Manager: _____,

P.O. Box 791, Boulder, Colorado, 80306. Telephone: _____

Contractor: _____,

_____ [address], Telephone: _____

This agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of each of the parties hereto.

In witness whereof, the contractor hereunder places its signature in agreement, and the city has caused this agreement to be signed by the city manager and countersigned by the director of finance and record, purchasing agent, and city attorney.

CONTRACTOR:

By: _____
President

Date: _____

ATTEST:

By: _____
Secretary

STATE OF COLORADO)
) SS
COUNTY OF BOULDER)

Before me, _____, a notary public in and for the County of Boulder, State of Colorado, personally appeared _____, known to me personally to be the person(s) whose signatures(s) appear hereon and who subscribed their signature(s) in my presence this ____ day of _____, 20__.

Witness my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

THE CITY OF BOULDER, COLORADO

By: _____ Date: _____
City Manager

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

Date: _____

By: _____ Date: _____
Purchasing Agent

Approved as to form:

By: _____ Date: _____
City Attorney

[Form 6]

PERFORMANCE BOND

_____, as principal, hereinafter called the contractor, and _____, as surety, with general offices in _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, are hereby bound unto the City of Boulder, Colorado, as obligee, hereinafter called the city, in the penal sum of _____ DOLLARS (\$_____) in United States currency, for the payment of which sum the contractor and surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of the obligation is that the principal and the City of Boulder, Colorado have entered into a certain Contract, dated _____, for the construction of a project described as

located in Boulder County in the State of Colorado. Said work of construction to be done according to the requirements of said contract;

NOW THEREFORE, if the said principal shall at all times duly and faithfully discharge its, his or their duties under said contract, and shall duly and faithfully perform all the obligations thereof, and shall and will indemnify and save harmless the City of Boulder, Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said City of Boulder, Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the default of the principal or anyone acting for him as subcontractor or otherwise in the performance of this contract, or by reason of any failure on the part of said principal, his agents, servants or employees, his subcontractor or subcontractors, or any of them, in the performance of said contract or any portion thereof, these presents shall become void, otherwise to be and remain in full force and effect.

The City of Boulder, Colorado shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

EXECUTED on this _____ day of _____, 20____.

Attest:

(Contractor)

By:

(President)

(Surety Company)

By:

(Attorney-in-Fact)

[Form 7]

LABOR AND MATERIAL BOND

_____, as principal, hereinafter called contractor, and _____, as surety, with general offices in _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, are hereby bound unto the City of _____, Colorado, as obligee, hereinafter called city, in the penal sum of _____ DOLLARS (\$_____) in United States currency, for the payment of which sum the contractor and surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of the obligation is that the principal and the City of Boulder, Colorado have entered into a certain Contract, dated _____, for the construction of a project described as _____

located in Boulder County in the State of Colorado. Said work of construction to be done according to the requirements of said.

NOW, THEREFORE, if the said principal, his sub-contractor or sub-contractors, and each and all of them, shall duly pay for all labor, materials, and other supplies used or consumed in the performance of the work contracted to be done or any part thereof, and if the said principal shall also fully indemnify and save harmless the City of Boulder, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said City of Boulder or any persons as provided by the Statutes of the State of Colorado, may or shall suffer by reason of the default of the principal or anyone acting for him as sub-contractor in connection with such payments, these presents shall become void, otherwise to be and remain in full force and effect.

The City of Boulder shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

EXECUTED on this _____ day of _____, 20__.

Attest:

(Contractor)

By: _____
(President)

(Surety Company)

By: _____
(Attorney-in-Fact)

[Form 8]

WORK DIRECTIVE

Work Directive No. _____

Date _____ Project Name _____

Project Number _____ P.O. Number _____

CITY: CITY OF BOULDER, COLORADO

CONTRACTOR: _____

The CONTRACTOR is directed to proceed promptly with the following change(s):

Description: _____

Attachments: _____

If a claim is made that the above change(s) have affected the Contract Price or Contract Time, any claim for a Change Order based thereon will involve one of the following methods of determining the effect of the change(s).

Method of determining change in Contract Price:

Method of determining change in Contract Time:

Time and Materials

CONTRACTOR's records

Unit Prices

ENGINEER's records

Cost plus fixed fee

Other _____

Other _____

Estimated (increase) (decrease) in Contract Price: \$_____.
If the change involves an increase, the estimated amount is not to be exceeded without further authorization .

Estimated (increase) (decrease) Contract Time: _____ days.
If the change involves an increase, the estimated time is not to be exceeded without further authorization.

APPROVED: _____
CONTRACTOR

PROJECT MANAGER

[Form 9]

CHANGE ORDER #

Project Number _____ P.O. Number _____

Date: _____

FROM: CITY OF BOULDER, COLORADO

TO: _____

<u>Quantity</u>	<u>Item</u>	<u>Unit Cost</u>	<u>Total</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The above items of construction shall be (added) (subtracted) at the unit costs as agreed.

(Increase) (Decrease) \$ _____

Original contract amount _____
 Previous contract amount _____
 Amount this change order _____
 Revised contract amount _____

Original substantial completion date _____
 Previous substantial completion date _____
 Contract period increase/decrease
 by this change over _____
 Revised substantial completion _____

Original final completion date _____
 Previous final completion date _____
 Contract period increase/decrease
 by this change over _____
 Revised final completion date _____

If this modification causes an increase in the contract price, it constitutes compensation in full to the contractor and its subcontractors and suppliers for all costs and mark-ups directly and indirectly attributable to the charges ordered herein, for all delays, impacts and disruptions related thereof, and for the performance of the changes within the stated time.

If this change order causes the aggregate amount due the contractor under the contract to exceed the original contract price, the city hereby assures the contractor that funds sufficient to cover the cost of the change have been lawfully appropriated.

Change Order Prepared By _____ Date: _____

Change Order Approved By _____ Date: _____
Contractor

Order Approved By _____ Date: _____
Project Manager

Change Order Approved By _____ Date: _____
Department Head

[Form 11]

APPLICATION FOR PAYMENT

Number _____ Date _____ P.O. Number: _____

OWNER: CITY OF BOULDER

PROJECT: _____

CONTRACTOR: _____

FOR WORK ACCOMPLISHED THROUGH THE DATE OF: _____

Work Completed

<u>Item</u>	<u>Amount</u>
Original Contract Amount	\$ _____
Net Change by Work Directives or Change Orders Thru Work Directive	\$ _____
Revised Contract Amount	\$ _____
Amount Earned to Date Thru Pay Estimate	\$ _____
Retainage (%)	\$ _____
Subtotal	\$ _____
Less Previous Payments	\$ _____
Amount due this payment	\$ _____

CONTRACTOR'S CERTIFICATION

The undersigned CONTRACTOR certifies that all previous progress payments received from the OWNER in connection with this contract have been applied to discharge obligations incurred as a result of this work and that title to materials and equipment incorporated in the work or otherwise listed in or covered by this APPLICATION FOR PAYMENT will pass to the OWNER free of all liens, claims, security interests, and encumbrances (except as covered by a BOND acceptable to the OWNER) at the time of payment.

REQUESTED: _____
CONTRACTOR _____ DATE _____

RECOMMENDED _____
OWNER'S REPRESENTATIVE _____ DATE _____

APPROVED: _____
OWNER _____ DATE _____

[Form 12]

CERTIFICATE OF SUBSTANTIAL COMPLETION

This certifies that the building or structure known as _____, project no. _____:

1. has been inspected by the project manager or another duly authorized official of the City of Boulder, and
2. the work or portion thereof is substantially complete as defined in Appendix I (45) and section 713 of the general conditions.

Description of work or portion thereof which is substantially complete:

Address or Location: _____

Contractor: _____

Address of Contractor: _____

The following items still need to be completed:

Item	Expected Completion Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The Contractor's guarantee (*see* section 716) shall begin on _____.

Responsibility for payment of the following items shall be placed upon:

Security: _____

Maintenance: _____

Heat: _____

Utilities: _____

Damage to the Work: _____

Insurance: _____

Comments: _____

Date of Substantial Completion: _____.

Signed:

Project Manager

Date

Contractor

Date

[Form 13]

CERTIFICATE OF OCCUPANCY

This certifies that the building or structure known as _____, project no. _____:

1. Has been inspected by the project manager or another duly authorized official of the City of Boulder; and

2. That it complies with the provisions of the City Building Code for the Fire Zone and the Occupancy Group on which it is located.

Description of Building or Structure: _____

Address or Location: _____

Contractor: _____

Address: _____

Building Permit No.: _____

Fire Zone: _____

Occupancy Group: _____

Construction Type: _____

Witness my hand and seal this _____ day of _____, 20____.

Project Manager

[Form 14]

FINAL INSPECTION REPORT

Project No. _____ Date: _____

To: _____, Contractor

From: _____, Project Manager

The City of Boulder has performed its final inspection of the work, and accepts the work subject to the contractor's performance of the following repairs or replacements:

The city does/does not [circle] hereby finally accept the work.

The contractor agrees that the performance bond shall remain in effect during the guarantee period through _____, 20____. The contractor further agrees to maintain in effect all insurance required under article 3, except for builder's risk, and to procure additional bonds, as required by the city, to cover any extension in the guarantee period necessitated by defects in the work which are discovered during the guarantee period.

The project manager does/does not [circle] hereby certify that the contractor is eligible to receive final payment for the work.

Signed:

Project Manager

Date

Contractor

Date

[Form 16]

CLAIM RELEASE

For valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned hereby releases the City of Boulder and waives all right to file a claim for labor, services, machinery, tools, equipment, or materials furnished prior to _____, 20____, to _____, the contractor, for the work performed on the City of Boulder project no. _____, located at _____, in the City of Boulder, Boulder County, Colorado.

In the event an employee or agent or other person hired by the undersigned to perform the work under the contract brings a claim against the city for payment of labor or materials, or both, the undersigned agrees to indemnify the city and to satisfy fully any such claim brought against the city unless such claim is due to an act of the city or an A/E hired by the city to design or oversee the work, or any agent or employee thereof.

This release is valid only if check no. _____, drawn by _____ on the _____ bank, for \$ _____, dated _____, 20____, is paid.

Supplier or Subcontractor

By: _____
President

Date: _____

Contractor

By: _____
President

Date: _____

AFFIDAVIT THAT ALL CLAIMS ARE SATISFIED

We, _____, as contractor, and _____, as surety, do hereby state that all subcontractors, vendors, persons, or firms who have furnished labor, materials, apparatus, fixtures, rental machinery, supplies, tools, or equipment for the City of Boulder project no. _____, located at _____, have been fully paid or satisfactorily secured, and that all city taxes have been paid. If any claims previously known or unknown to the contractor or surety are brought against the contractor, surety, or the City of Boulder for work performed on project no. _____, the surety hereby agrees to pay such claims, or to defend any action brought to satisfy such claims, and to indemnify fully the City of Boulder against liability for any such claims, unless such claims are due to an act or omission of the city or A/E hired by the city to design or oversee the work, or any agent or employee thereof.

Contractor

Surety

Signature

By: _____
Attorney-in-Fact

Date

Date

STATE OF COLORADO)
) SS
COUNTY OF BOULDER)

Before me, _____, a notary public in and for the County of Boulder, State of Colorado, personally appeared _____, known to me personally to be the person(s) whose signature(s) appear hereon and who subscribed their signatures(s) in my presence this _____ day of _____, 20__.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public
Address:

[Form 18]

SURETY'S CONSENT TO FINAL PAYMENT

The undersigned surety agrees to release the City of Boulder for liability for claims filed against the contractor pursuant to Section 38-26-107 C.R.S. by any supplier within ninety (90) days of the final settlement as set forth in section 912 of the general conditions.

The undersigned surety further agrees to release the city for liability for claims filed against the contractor pursuant to Sections 38-26-105 and 106 C.R.S. by any person who supplied equipment or materials or performed labor for the work within six (6) months following the date of substantial completion.

The undersigned surety further agrees to release the city for liability for claims filed against the city within six months of the date of substantial completion by third persons because of personal or property damage suffered by such claimants pursuant to section 913.

In consideration therefor, the city agrees to make final payment to the contractor of all amounts which have been retained by the city, except such amounts which are the subject of a dispute between the city and the contractor.

Signed:

City Manager

Date

City Attorney

Date

Surety

Date

By: _____
Attorney-in-Fact

[Form 20]

PROPOSED SUBCONTRACTORS

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

[Form 21]

SCHEDULE OF MANUFACTURERS AND SUPPLIERS

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

APPENDIX 2: CONSTRUCTION FORMS

Form 1	Bid Bond
Form 2	Contractor/Subcontractor Qualification Form
Form 3	Contractor/Subcontractor Verification Form
Form 4	Notice of Award
Form 5	Contract for Construction in the City of Boulder, Colorado
Form 6	Performance Bond
Form 7	Labor and Material Bond
Form 8	Work Directive
Form 9	Change Order
Form 10	Field Order
Form 11	Application for Payment
Form 12	Certificate of Substantial Completion
Form 13	Certificate of Occupancy
Form 14	Final Inspection Report
Form 15	Payment of Boulder Sales and Use Tax
Form 16	Claim Release
Form 17	Affidavit that All Claims are Satisfied
Form 18	Surety's Consent to Final Payment
Form 19	Guarantee Period Inspection Report
Form 20	Proposed Subcontractors
Form 21	Schedule of Manufacturers and Suppliers

[Form 1]

BID BOND

Witness:

_____, as principal, hereinafter called the “bidding contractor,” and _____, as “surety,” a corporation properly organized under the laws of Colorado or authorized to do business in Colorado, hereby obligate themselves to the City of Boulder, as obligee, hereinafter called the “city,” in the penal sum of _____ dollars (\$_____), which penal sum shall secure the obligation of the bidding contractor to enter into contract with the city for the work associated with

_____.

Project Number _____, if the bidding contractor is so selected by the city.

If the city accepts the bid of the bidding contractor, and if the bidding contractor properly executes a contract with the city to perform the work covered by the award, then this obligation shall be null and void.

In the alternative, if the bidding contractor refuses to enter into contract with the city for work described in the bid, but rather pays to the city the difference between the bidding contractor’s stated bid amount and the actual amount bid by an alternate bidding contractor, who is accepted by the city, then this obligation shall be null and void.

EXECUTED on this _____ day of _____, 20____.

(Contractor)

By: _____
(President)

(Surety Company)

By: _____
(Attorney-in-Fact)

[Form 2]

CONTRACTOR/SUBCONTRACTOR QUALIFICATION FORM

I. General Information

Your Company:

Name: _____

Address: _____

How long have you been in business? _____

How long have you been in business under the present business name? _____

What former name(s), if any, has your company operated under in the past five (5) years?

What is the largest contract you have been awarded in the past twelve (12) months?

II. Information: Previous Construction Contract

Provide the following information for three (3) contracts you have performed, or are currently performing, within the past five (5) years. At least two (2) contracts must be completed. If you have performed any contract with the City of Boulder, or County of Boulder, or State of Colorado, include information about the least one (1) such contract.

Contract 1

Owner _____

Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____

Name

Address

Phone

Surety for Performance Bond: _____

Address

Phone

Surety for Labor and Material Bond: _____

Address

Phone

Insurance Company: _____

Name

Address

Phone

Major Subcontractor: _____

Name

Address

Phone

Major Supplier: _____

Name

Address

Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

* * * * *

Contract 2

Owner _____

Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____

Name

Address

Phone

Surety for Performance Bond: _____

Address

Phone

Surety for Labor and Material Bond: _____

Address

Phone

Insurance Company: _____
Name

Address

Phone

Major Subcontractor: _____
Name

Address

Phone

Major Supplier: _____
Name

Address

Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

* * * * *

Contract 3

Owner _____
Name

Address

Phone

Date Begun _____ Date Completed _____ Dollar Amount _____

Description of Work _____

Architect _____
Name

Address Phone

Surety for Performance Bond: _____

Address Phone

Surety for Labor and Material Bond: _____

Address Phone

Insurance Company: _____
Name

Address Phone

Major Subcontractor: _____
Name

Address Phone

Major Supplier: _____
Name

Address Phone

Are there any lawsuits, claims, or disputes resulting from this project? If so, please describe:

III. Describe the work you normally perform with your own forces:

IV. Have you, or any officer or partner of your organization, when working for another organization, failed to complete any work awarded to you or such officer or partner? If so, attach a separate sheet of explanation.

V. Are there any claims or law suits against your organization, against predecessor organizations of your organization, or against any officer or partner who currently works for your organization which have been brought during the previous five years? If so, attach a separate sheet of explanation.

VI. Resumes

Provide resumes for at least two (2) persons with your company. One resume should be for an officer of the company: president, vice-president, etc. The second resume should be for an operations manager of the company who has had experience directing a job as a contractor or superintendent. An operations manager may also be an officer of the company.

Officer: _____
Name

Operations Manager: _____
Name

VII. Trade References:

- 1.
- 2.
- 3.
- 4.
- 5.

VIII. Bank References:

- 1.
- 2.
- 3.
- 4.
- 5.

IX. Name of Bonding Company and name and address of agent:

- X. Attach a financial statement, audited if available, (consolidated if the contractor is part of an affiliated group), including contractor's latest balance sheet and income statement showing the following items:
- A. Current Assets (*e.g.*, cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses):
 - B. Net Fixed Assets:
 - C. Other Assets:
 - D. Current Liabilities (*e.g.*, accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries, and accrued payroll taxes):
 - E. Other Liabilities (*e.g.*, capital, capital stock, authorized and outstanding shares par values, earned surplus, and retained earnings):

Name of firm preparing financial statement and date thereof:

Is this financial statement for the identical organization named in Part I on page one? _____

If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (*e.g.*, parent-subsiary).

Will this organization act as guarantor of the contract for construction?

[Form 3]

CONTRACTOR/SUBCONTRACTOR VERIFICATION FORM
(For Internal Use Only)

Name of Contractor

Name of Owner of Project

I. Project History

Contact the following parties to determine their evaluation of the contractor or subcontractor (hereinafter referred as "contractor").

1. Owner _____ Date Contacted _____

Are you satisfied with the work? yes _____ no _____

Would you contract with this contractor again? yes _____ no _____

2. Architect _____ Date Contacted _____

Are you satisfied with the contractor's performance of the work? yes _____ no _____

Are there any lawsuits, claims, or disputes which have resulted from this contract, or which are now pending, or from any other contract with the contractor on which you were the architect?

Would you work with this contractor again in the future? yes _____ no _____

3. Surety: Performance Bond

Are there any outstanding lawsuits, claims, or disputes which resulted from this contract, or which are now pending, or from any other contract on which you were a surety for this contractor?

Would you bond this contractor again on a future project? yes _____ no _____

Comments: _____

4. Surety: Labor and Material Bond

Name

Date Contacted

Are there any outstanding lawsuits, claims, or disputes which resulted from this contract, or which are now pending, or from any other contract on which you were a surety for this contractor?

Would you bond this contractor again on a future project? yes _____ no _____

Comments: _____

5. Insurance Company

Name

Date Contacted

Are there any outstanding lawsuits, claims, or disputes which resulted from this contract, or which are now pending, or from any other contract on which you provided insurance for this contractor?

Would you insure this contractor again on a future project? yes _____ no _____

At higher insurance rates? yes _____ no _____

Explain: _____

6. Subcontractor

Name

Date Contacted

Have you been completely paid? yes _____ no _____

Are there any outstanding lawsuits, claims, or disputes which resulted from this project, or which are now pending, or from any other work performed for this contractor?

Would you work for this contractor again on a future project? yes _____ no _____

7. Supplier

Name

Date Contacted

Describe the materials you supplied to the contractor:

Were you paid promptly? yes _____ no _____

Are there any outstanding lawsuits, claims, or disputes which resulted from this or any other project on which you have provided materials for this contractor?

II. Evaluation

Contractor is Approved: yes _____ yes, but with reservation _____ no _____

Need Further Information: _____

[Form 4]

NOTICE OF AWARD

DATE: _____

FROM: _____

TO: _____

Project Number: _____

This notice certifies that the contractor listed above has been selected to perform the work. The beginning date of the contract shall be the date the purchase order is issued, which shall be the official notice to proceed.

Signed:

Project Manager

Date

Contractor

Date

CONTRACT AGREEMENT FOR CONSTRUCTION
IN THE CITY OF BOULDER, COLORADO

This Agreement, made and entered into this ____ day of _____, 20____, between the City of Boulder, Colorado, hereinafter called the "city," and _____, hereinafter called the "contractor." The city and the contractor, for the consideration hereinafter named, agree as follows:

Part One: The Contract Documents

The contract documents consist of this contract agreement, the general conditions, the special conditions, the bid proposal, the drawings and specifications, and change orders, addenda and other documents which may be required or specified.

Part Two: The Work

The contractor shall perform all the work required by the contract documents as specified by Bid No. _____ and Addenda No. _____, attached hereto.

Part Three: Liquidated Damages for Failure to Complete Work on Time

The contractor hereby agrees to be liable for liquidated damages in the sum of _____ DOLLARS (\$ _____) per day for each and every day that substantial completion of the work is delayed past the established time limit or limits, including due allowance for any extension of time agreed to by the city. The liquidated damages herein specified shall only apply to the contractor's delay in performance, and shall not include litigation or attorneys' fees incurred by the city, or other incidental or consequential damages suffered by the city due to the contractor's performance. If the city charges liquidated damages to the contractor, this shall not preclude the city from commencing an action against the contractor for other actual harm resulting from the contractor's performance which is not due to the contractor's delay in performance.

Part Four: Contract Price

The city shall pay the contractor in current funds for the performance of the work, subject to additions and deductions by change order as provided in the contract documents, the contract price of _____ DOLLARS (\$ _____), as set forth in the bid proposal of the contractor dated _____, as amended by _____, dated _____.

Part Five: Appropriations

[mark the clause or clauses which apply]

The city has appropriated funds to pay the contractor for its work under this contract that are equal to or greater than the contract price stated above. (To be used for construction projects that are scheduled to be completed within one fiscal year.)

The amount of funds appropriated to pay the contractor for its work under this contract is \$ _____. Before the contractor commences any work for which the city has agreed to pay a sum in excess of the appropriated amount stated above, the city shall provide the contractor with a written assurance that funds equal to or in excess of the additional sum have been lawfully appropriated. (To be used for phased construction projects occurring over more than one fiscal year where funds sufficient to pay the full contract price are expected to be appropriated by the city for fiscal years subsequent to the one in which the work commenced.)

[] The funds to be used to pay the contractor for its work under this contract have been raised by issuing bonds. Appropriations by the city to pay the debt on those bonds may occur subsequent to the date of this contract. The city shall provide the contractor with a written assurance that each such appropriation has been lawfully made shortly after it occurs. (To be used for construction projects funded by bonded indebtedness.)

Part Six: Affidavit of Compliance with Affirmative Action Requirement

The contractor has read a copy of Section 12-1-3, B.R.C. 1981, which relates to nondiscrimination, and agrees to comply with its terms so long as the contractor is under contract with the city.

Part Seven: Warranty of NonCollusion

By executing this contract, the undersigned warrants that:

- 1) The contractor has not allowed any competing bidder or employee or agent thereof to see the contractor's bid or to know of its contents.
- 2) The contractor has not discussed the contents of its bid with any competing bidder, or any other person who a reasonably prudent person would believe would be likely to transmit information to a competing bidder.
- 3) The contractor has drafted its bid independently of any competing bidder.

Failure to abide by the above provisions relating to collusion shall render the contractor liable to the city for damages including, without limitation, payment of the bid bond as liquidated damages. In addition, the city may void any contract entered into with a bidder guilty of collusion. If the bidder has engaged in any practice which might be suspected to be collusive, please explain below:

Part Eight: Addresses of Contracting Parties

Correspondence may be sent to the following addresses:

City/Project Manager: _____,

P.O. Box 791, Boulder, Colorado, 80306. Telephone: _____

Contractor: _____,

_____ [address], Telephone: _____

This agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of each of the parties hereto.

In witness whereof, the contractor hereunder places its signature in agreement, and the city has caused this agreement to be signed by the city manager and countersigned by the director of finance and record, purchasing agent, and city attorney.

CONTRACTOR:

By: _____
President

Date: _____

ATTEST:

By: _____
Secretary

STATE OF COLORADO)
) SS
COUNTY OF BOULDER)

Before me, _____, a notary public in and for the County of Boulder, State of Colorado, personally appeared _____, known to me personally to be the person(s) whose signatures(s) appear hereon and who subscribed their signature(s) in my presence this ____ day of _____, 20__.

Witness my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

THE CITY OF BOULDER, COLORADO

By: _____ Date: _____
City Manager

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

Date: _____

By: _____ Date: _____
Purchasing Agent

Approved as to form:

By: _____ Date: _____
City Attorney

[Form 6]

PERFORMANCE BOND

_____, as principal, hereinafter called the contractor, and _____, as surety, with general offices in _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, are hereby bound unto the City of Boulder, Colorado, as obligee, hereinafter called the city, in the penal sum of _____ DOLLARS (\$_____) in United States currency, for the payment of which sum the contractor and surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of the obligation is that the principal and the City of Boulder, Colorado have entered into a certain Contract, dated _____, for the construction of a project described as

located in Boulder County in the State of Colorado. Said work of construction to be done according to the requirements of said contract;

NOW THEREFORE, if the said principal shall at all times duly and faithfully discharge its, his or their duties under said contract, and shall duly and faithfully perform all the obligations thereof, and shall and will indemnify and save harmless the City of Boulder, Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said City of Boulder, Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the default of the principal or anyone acting for him as subcontractor or otherwise in the performance of this contract, or by reason of any failure on the part of said principal, his agents, servants or employees, his subcontractor or subcontractors, or any of them, in the performance of said contract or any portion thereof, these presents shall become void, otherwise to be and remain in full force and effect.

The City of Boulder, Colorado shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

EXECUTED on this _____ day of _____, 20____.

Attest:

(Contractor)

By:

(President)

(Surety Company)

By:

(Attorney-in-Fact)

[Form 7]

LABOR AND MATERIAL BOND

_____, as principal, hereinafter called contractor, and _____, as surety, with general offices in _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, are hereby bound unto the City of _____, Colorado, as obligee, hereinafter called city, in the penal sum of _____ DOLLARS (\$_____) in United States currency, for the payment of which sum the contractor and surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of the obligation is that the principal and the City of Boulder, Colorado have entered into a certain Contract, dated _____, for the construction of a project described as _____

located in Boulder County in the State of Colorado. Said work of construction to be done according to the requirements of said.

NOW, THEREFORE, if the said principal, his sub-contractor or sub-contractors, and each and all of them, shall duly pay for all labor, materials, and other supplies used or consumed in the performance of the work contracted to be done or any part thereof, and if the said principal shall also fully indemnify and save harmless the City of Boulder, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said City of Boulder or any persons as provided by the Statutes of the State of Colorado, may or shall suffer by reason of the default of the principal or anyone acting for him as sub-contractor in connection with such payments, these presents shall become void, otherwise to be and remain in full force and effect.

The City of Boulder shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

EXECUTED on this _____ day of _____, 20__.

Attest:

(Contractor)

By:

(President)

(Surety Company)

By:

(Attorney-in-Fact)

[Form 8]

WORK DIRECTIVE

Work Directive No. _____

Date _____ Project Name _____

Project Number _____ P.O. Number _____

CITY: CITY OF BOULDER, COLORADO

CONTRACTOR: _____

The CONTRACTOR is directed to proceed promptly with the following change(s):

Description: _____

Attachments: _____

If a claim is made that the above change(s) have affected the Contract Price or Contract Time, any claim for a Change Order based thereon will involve one of the following methods of determining the effect of the change(s).

Method of determining change in
Contract Price:

Time and Materials

Unit Prices

Cost plus fixed fee

Other _____

Method of determining change in
Contract Time:

CONTRACTOR's records

ENGINEER's records

Other _____

Estimated (increase) (decrease)
in Contract Price: \$_____.
If the change involves an increase,
the estimated amount is not to be
exceeded without further
authorization .

Estimated (increase) (decrease)
Contract Time: _____ days.
If the change involves an increase,
the estimated time is not to be
not to be exceeded without further
authorization.

APPROVED: _____
CONTRACTOR

PROJECT MANAGER

[Form 9]

CHANGE ORDER #

Project Number _____ P.O. Number _____

Date: _____

FROM: CITY OF BOULDER, COLORADO

TO: _____

<u>Quantity</u>	<u>Item</u>	<u>Unit Cost</u>	<u>Total</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The above items of construction shall be (added) (subtracted) at the unit costs as agreed.

(Increase) (Decrease) \$ _____

Original contract amount _____
 Previous contract amount _____
 Amount this change order _____
 Revised contract amount _____

Original substantial completion date _____
 Previous substantial completion date _____
 Contract period increase/decrease
 by this change over _____
 Revised substantial completion _____

Original final completion date _____
 Previous final completion date _____
 Contract period increase/decrease
 by this change over _____
 Revised final completion date _____

If this modification causes an increase in the contract price, it constitutes compensation in full to the contractor and its subcontractors and suppliers for all costs and mark-ups directly and indirectly attributable to the charges ordered herein, for all delays, impacts and disruptions related thereof, and for the performance of the changes within the stated time.

If this change order causes the aggregate amount due the contractor under the contract to exceed the original contract price, the city hereby assures the contractor that funds sufficient to cover the cost of the change have been lawfully appropriated.

Change Order Prepared By _____ Date: _____

Change Order Approved By _____ Date: _____
Contractor

Order Approved By _____ Date: _____
Project Manager

Change Order Approved By _____ Date: _____
Department Head

[Form 11]

APPLICATION FOR PAYMENT

Number _____ Date _____ P.O. Number: _____

OWNER: CITY OF BOULDER

PROJECT: _____

CONTRACTOR: _____

FOR WORK ACCOMPLISHED THROUGH THE DATE OF: _____

Work Completed <u>Item</u>	<u>Amount</u>
Original Contract Amount	\$ _____
Net Change by Work Directives or Change Orders Thru Work Directive	\$ _____
Revised Contract Amount	\$ _____
Amount Earned to Date Thru Pay Estimate	\$ _____
Retainage (%)	\$ _____
Subtotal	\$ _____
Less Previous Payments	\$ _____
Amount due this payment	\$ _____

CONTRACTOR'S CERTIFICATION

The undersigned CONTRACTOR certifies that all previous progress payments received from the OWNER in connection with this contract have been applied to discharge obligations incurred as a result of this work and that title to materials and equipment incorporated in the work or otherwise listed in or covered by this APPLICATION FOR PAYMENT will pass to the OWNER free of all liens, claims, security interests, and encumbrances (except as covered by a BOND acceptable to the OWNER) at the time of payment.

REQUESTED: _____
CONTRACTOR _____ DATE _____

RECOMMENDED _____
OWNER'S REPRESENTATIVE _____ DATE _____

APPROVED: _____
OWNER _____ DATE _____

[Form 12]

CERTIFICATE OF SUBSTANTIAL COMPLETION

This certifies that the building or structure known as _____, project no. _____:

1. has been inspected by the project manager or another duly authorized official of the City of Boulder, and
2. the work or portion thereof is substantially complete as defined in Appendix I (45) and section 713 of the general conditions.

Description of work or portion thereof which is substantially complete:

Address or Location: _____

Contractor: _____

Address of Contractor: _____

The following items still need to be completed:

Item	Expected Completion Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The Contractor's guarantee (*see* section 716) shall begin on _____.

Responsibility for payment of the following items shall be placed upon:

Security: _____

Maintenance: _____

Heat: _____

Utilities: _____

Damage to the Work: _____

Insurance: _____

Comments: _____

Date of Substantial Completion: _____.

Signed:

Project Manager

Date

Contractor

Date

[Form 13]

CERTIFICATE OF OCCUPANCY

This certifies that the building or structure known as _____, project no. _____:

1. Has been inspected by the project manager or another duly authorized official of the City of Boulder; and

2. That it complies with the provisions of the City Building Code for the Fire Zone and the Occupancy Group on which it is located.

Description of Building or Structure: _____

Address or Location: _____

Contractor: _____

Address: _____

Building Permit No.: _____

Fire Zone: _____

Occupancy Group: _____

Construction Type: _____

Witness my hand and seal this _____ day of _____, 20____.

Project Manager

[Form 14]

FINAL INSPECTION REPORT

Project No. _____ Date: _____

To: _____, Contractor

From: _____, Project Manager

The City of Boulder has performed its final inspection of the work, and accepts the work subject to the contractor's performance of the following repairs or replacements:

The city does/does not [circle] hereby finally accept the work.

The contractor agrees that the performance bond shall remain in effect during the guarantee period through _____, 20____. The contractor further agrees to maintain in effect all insurance required under article 3, except for builder's risk, and to procure additional bonds, as required by the city, to cover any extension in the guarantee period necessitated by defects in the work which are discovered during the guarantee period.

The project manager does/does not [circle] hereby certify that the contractor is eligible to receive final payment for the work.

Signed:

Project Manager

Date

Contractor

Date

[Form 16]

CLAIM RELEASE

For valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned hereby releases the City of Boulder and waives all right to file a claim for labor, services, machinery, tools, equipment, or materials furnished prior to _____, 20____, to _____, the contractor, for the work performed on the City of Boulder project no. _____, located at _____, in the City of Boulder, Boulder County, Colorado.

In the event an employee or agent or other person hired by the undersigned to perform the work under the contract brings a claim against the city for payment of labor or materials, or both, the undersigned agrees to indemnify the city and to satisfy fully any such claim brought against the city unless such claim is due to an act of the city or an A/E hired by the city to design or oversee the work, or any agent or employee thereof.

This release is valid only if check no. _____, drawn by _____ on the _____ bank, for \$ _____, dated _____, 20____, is paid.

Supplier or Subcontractor

By: _____
President

Date: _____

Contractor

By: _____
President

Date: _____

[Form 17]

AFFIDAVIT THAT ALL CLAIMS ARE SATISFIED

We, _____, as contractor, and _____, as surety, do hereby state that all subcontractors, vendors, persons, or firms who have furnished labor, materials, apparatus, fixtures, rental machinery, supplies, tools, or equipment for the City of Boulder project no. _____, located at _____, have been fully paid or satisfactorily secured, and that all city taxes have been paid. If any claims previously known or unknown to the contractor or surety are brought against the contractor, surety, or the City of Boulder for work performed on project no. _____, the surety hereby agrees to pay such claims, or to defend any action brought to satisfy such claims, and to indemnify fully the City of Boulder against liability for any such claims, unless such claims are due to an act or omission of the city or A/E hired by the city to design or oversee the work, or any agent or employee thereof.

Contractor

Surety

Signature

By: _____
Attorney-in-Fact

Date

Date

STATE OF COLORADO)
) SS
COUNTY OF BOULDER)

Before me, _____, a notary public in and for the County of Boulder, State of Colorado, personally appeared _____, known to me personally to be the person(s) whose signature(s) appear hereon and who subscribed their signatures(s) in my presence this _____ day of _____, 20__.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public
Address:

[Form 18]

SURETY'S CONSENT TO FINAL PAYMENT

The undersigned surety agrees to release the City of Boulder for liability for claims filed against the contractor pursuant to Section 38-26-107 C.R.S. by any supplier within ninety (90) days of the final settlement as set forth in section 912 of the general conditions.

The undersigned surety further agrees to release the city for liability for claims filed against the contractor pursuant to Sections 38-26-105 and 106 C.R.S. by any person who supplied equipment or materials or performed labor for the work within six (6) months following the date of substantial completion.

The undersigned surety further agrees to release the city for liability for claims filed against the city within six months of the date of substantial completion by third persons because of personal or property damage suffered by such claimants pursuant to section 913.

In consideration therefor, the city agrees to make final payment to the contractor of all amounts which have been retained by the city, except such amounts which are the subject of a dispute between the city and the contractor.

Signed:

City Manager

Date

City Attorney

Date

Surety

Date

By: _____
Attorney-in-Fact

[Form 20]

PROPOSED SUBCONTRACTORS

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

[Form 21]

SCHEDULE OF MANUFACTURERS AND SUPPLIERS

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____

Name _____ Phone No. _____
Address _____
City _____ State _____ Zip Code _____