

GENERAL CONTRACT CONDITIONS

1. **DEFINITIONS:** The Contract Documents shall include; the Advertisement for Bids, Instructions to Bidders, Proposal, Bid Bond, Labor & Material Bond, Performance Bond, Construction Agreement, General Contract Conditions, Supplementary Conditions, Drawings and Specifications including all Addenda issued prior to the opening of bids, approved Change Orders, Contractor's Application for Payment and Engineers Certificate of Payment.

The following definitions and terms shall be applicable to all the Contract Documents:

- A. The words "**Contract**" or "**Contract Documents**" shall be held to include all the items in the foregoing list.
- B. "**Owner**" shall mean **Town of Lyons**, Boulder County, Colorado, acting through its duly authorized representative.
- C. "**Contractor**" shall mean each person, firm or corporation entering into a contract directly with the Owner.
- D. "**Subcontractor**" shall include those having a direct contract with the Contractor, or another subcontractor, for performing work and/or furnishing labor or materials, and those furnishing material worked to a special design according to the plans and specifications for the work, but shall not include anyone who merely furnishes material not so worked.
- E. "**Engineer**" or "**Consultant**" shall mean the Engineer or Consultant designated, appointed, or otherwise employed by the Owner, acting within the scope of the particular duties entrusted to them by the Owner in each case.
- F. "**Notice to Contractor**" shall be deemed to have been duly served when delivered in writing and in person to the individual or to a member of the firm or to an officer of the corporation for which it is intended, or when received in writing at the business address of such individual, partner or officer last known to the person giving the notice.
- G. The "**Work**" shall mean the equipment, supplies, materials, labor and services to be furnished under the Contract and the carrying out of all obligations imposed or required by the Contract Documents.
- H. The "**Date of Completion**" of the work is the date when construction is certified by the Engineer or Consultant and the Owner to be finally completed in accordance with the Contract Documents, as modified by any Change Orders agreed to by the parties

General Conditions (continued)

and when the Owner has fully accepted the project for the use for which it was intended. Such date will be set forth in a Letter of Acceptance issued by the Owner.

2. **REFERENCE STANDARDS:** Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of the Contract Documents unless specifically stated otherwise.
3. **DRAWINGS AND SPECIFICATIONS:**
 - A. Drawings and Specifications Available on Site. The Contractor shall maintain at the site for the Owner and Consultant one copy of the drawings and specifications, addenda, approved shop drawings, Change Orders, and other modifications, in good order and marked in a contrasting color to show all changes made during construction. The Contractor shall at all times give the Owner or its representatives access thereto.
 - B. Project Record Drawings and Specifications. Unless more detailed requirements are called out in the contract documents, the Contractor shall maintain a Contract set of drawings at the site with all changes or deviations from the original drawings neatly marked thereon in a contrasting color. The Contractor shall also maintain a Contract set of specifications at the site, noting therein by appropriate section, the names, models and other distinguishing characteristics of the product actually incorporated into the work. This set of drawings and specifications shall be updated daily as the job progresses and shall be made available to the Owner and Engineer for inspection at all times. Upon completion of the work and before final payment, this Project Record set of drawings and specifications shall be delivered to the Engineer.
 - C. Contractor to Check Drawings and Schedules. The Contractor shall check all dimensions, elevations, grades and quantities shown on the drawings and furnished to him by the Engineer, and shall notify the Engineer of any discrepancy between the drawings and the conditions on the ground, or any error or omission in drawings, or in the layout as given by stakes, points, or instructions, which he may discover. Before ordering any material or doing any work, the Contractor shall verify all measurements at the building and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the drawings. Any difference which may be found shall be submitted to the Engineer for consideration before proceeding with the work. The Contractor will not be allowed to take advantage of any error or omission in the drawings or Contract Documents. Full instructions will be furnished by the Engineer should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.
4. **ROYALTIES AND PATENTS:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof. If the Contractor has information that the

process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

- 5. ITEMS COVERED BY CONTRACT PRICE:** Unless otherwise specifically provided herein, the Contractor shall accept the compensation stated in the Contract as full payment for furnishing all bonds, insurance, materials, transportation, apparatus, temporary structures, equipment, services, fuel, energy, light, water, labor, and tools, and all other things necessary for the complete and proper execution of the Work contemplated by or reasonably implied from the Contract Documents, within the time limits indicated therein. Such amount shall include any loss or damage arising from the nature of the Work, from the action of the elements or from any unforeseen difficulties which may be encountered; all risks of every description connected with the prosecution of the Work; all expenses incurred in consequence of any suspension or discontinuance of the Work; and all other amounts necessary for completing the Work pursuant to the Contract Documents, within the time limits indicated therein.

6. EXECUTION, CORRELATION, INTENT, AND INTERPRETATION OF CONTRACT DOCUMENTS:

- A. Execution. The Contract Documents shall be signed in multiple copies as directed by the Owner. Within ten (10) days after Notice of Contract Award, the Contractor shall return to the Owner a minimum of four (4) fully executed original sets of the Construction Agreement; Performance Bond and Labor and Material Payment Bond with original Power of Attorney; and certificates of required insurance coverages. The date of the contract for purposes of these documents shall be the date of the Notice of Contract Award letter. The Owner will execute the Construction Agreement, assemble all copies, and distribute the Contract Documents. The Contractor shall not commence the Work until he receives the Notice to Proceed.
- B. Correlation. By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- C. Intent. The intention of the Contract Documents is to include all labor and materials, tools, equipment, construction equipment, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

The organization of the specifications into divisions, sections, and articles, as the case may be, and the arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of work to be performed by any trade.

General Conditions (continued)

It is intended that even though work is not covered under any heading, division, section, article, branch, class, or trade of the specifications, it shall nevertheless be supplied if it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results.

The specifications and drawings are intended to supplement but not necessarily duplicate each other. Any work exhibited in the one and not in the other shall be executed as if it had been set forth in both, so that the Work will be constructed according to the complete design as determined by the Engineer.

- D. Interpretation. Should anything necessary for a clear understanding of the Work be omitted from the specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written interpretations or instructions from the Engineer before proceeding with the Work affected thereby. It is understood and agreed that the Work shall be performed according to the true intent of the Contract Documents.

Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence of the Construction Documents is in the following sequence:

- 1) Addenda to the drawings and specifications take precedence over the original Construction Documents.
- 2) Should a conflict arise between the drawings and specifications, the specifications shall have precedence over the drawings.
- 3) In the drawings, the precedence shall be drawings of larger scale over those of smaller scale and noted materials over graphic indications.
- 4) Any work mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as if shown or mentioned in both. The Contractor shall examine the specifications and drawings and check all dimensions and notify the Engineer and the Owner of any discrepancies between the specifications and drawings and any deficiencies, omissions, or errors before any work is commenced.

7. MATERIALS, LABOR, FACILITIES, AND STORAGE:

- A. Contractor's Responsibility: Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools, equipment, machinery, transportation, and other facilities necessary for the proper execution and completion of the Work. The Contractor shall provide and pay for all the temporary facilities required to supply all the power, light, water, and heat needed by him and the subcontractors for their work and shall install and maintain all such facilities in such manner as to

General Conditions (continued)

protect the public and workers and conform with any applicable laws and regulations. If temporary heat and/or protection is required for the expeditious prosecution of the Work and before the permanent heating apparatus is available for use, the temporary heating apparatus shall be installed and operated in such a manner that the finish work and/or construction will not be damaged thereby.

- B. Materials: Unless otherwise specified, all materials shall be new and free of asbestos, and both workmanship and materials shall be of the highest quality. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials. The Contractor shall certify or provide evidence to the Owner that all materials used are asbestos-free. Samples shall be furnished, when specified, and the Work shall be in accordance with those samples which have been approved.
- C. Facilities and Storage: The Contractor shall provide and maintain, in a neat and sanitary condition, adequate temporary toilet facilities for the use of any and all employees engaged on the Work, in strict compliance with the requirements of all applicable codes, regulations, laws, and ordinances. In no event may present toilet facilities of any existing building at the site of the Work be used by employees of the Contractor or subcontractors. Upon completion of the Work, the Contractor shall remove all such temporary facilities from the site and disinfect the premises.

The Contractor shall provide suitable temporary facilities for workers and shall maintain on premises water-tight storage shed or sheds, tool houses for storage of building materials and tools which may be damaged by weather. The Contractor shall allow space for the erection of sheds and provide similar facilities for storage by subcontractors of their materials and tools. These facilities shall further provide for protection against theft and damage of building materials and tools. Upon completion of the Work, the Contractor shall remove all such temporary facilities from the site.

The Contractor shall provide adequate, weatherproofed, heated, and well-lighted office space at the site of the Work. The Contractor shall also provide telephone service at such office, which shall be available for the use of the Engineer, the Owner and their representatives without charge, except for toll calls.

All of the foregoing facilities shall be of a quality and placed in locations acceptable to the Engineer and the Owner.

8. **PERFORMANCE AND PAYMENT BONDS**: The successful bidder shall within ten (10) days execute, deliver to and file with the Owner, a good and sufficient bond to be approved by the Owner in a penal sum equal to the Contract price. Such bond shall be duly executed by a qualified corporate surety, conditioned upon the true and faithful performance of the Contract, and warranty work, and, in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or his subcontractor in performance of the Work contracted to

be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest as provided by law. Performance and payment bonds shall be on forms provided by the Owner and must be issued by qualified sureties as specified herein. The Performance Bond shall additionally guarantee that the Contractor shall remedy any omissions; correct any and all defects; and adjust and make operable all component parts of the Work falling under the requirements of his Contract which may be called to his attention within a period of twenty-four (24) months following the Date of Completion established in the Letter of Acceptance.

The expense of this bond shall be borne by the Contractor. If, at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

- 9. OBTAINING PERMITS, AND COMPLIANCE WITH LAWS AND REGULATIONS:** The Contractor and all subcontractors shall comply with all applicable Federal and State statutes and with rules, regulations and orders of any governmental body having jurisdiction over the Work to be performed, including the Colorado Department of Labor and the Colorado Department of Health. Contractor and subcontractors shall further comply with ordinances, laws and regulations of the Town of Lyons, Colorado.

Permits, governmental fees and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. The Owner is generally exempt from paying any fee for any building permit issued by any building departments and the Contractor shall see that no permit fee is paid. However, the Contractor shall secure such building permit from the proper governmental agency if requested by the Owner, in which case the cost of any such fee shall be verified and paid by the Owner.

The Contractor shall call for all inspections on a timely basis by the State of Colorado, Department of Labor, Safety Inspection Branch, and any other agency having jurisdiction over the Work.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified. Should any of the provisions of the Contract Documents be in conflict therewith, then that portion which is in conflict shall be considered stricken and the applicable statute, ordinance, regulation or ruling substituted therefor. If the Contractor observes such a conflict, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Owner, he shall bear all costs arising therefrom and to correct same.

- 10. SURVEYS, BENCHMARKS, MONUMENTS AND STAKES:**

General Conditions (continued)

- A. Surveys. As provided by the Owner, the Contractor shall obtain from the Engineer, a copy of all surveys describing property lines, elevation benchmarks, physical characteristics, and utility locations.
- B. Benchmarks. The Contractor shall properly stake out the work and provide and rigidly set benchmarks and batter boards as necessary for the proper performance of the Work. The Contractor shall remain responsible for their maintenance and their accuracy. A permanent benchmark, approved as to location and type by the Engineer, from which all grades are to be taken, shall be established near the site of the work by the Contractor. From this benchmark the Contractor shall ascertain all grades and levels to the building as needed. The Contract Documents will include all necessary information to establish the benchmark.
- C. Preservation of Monuments and Stakes. The Contractor shall carefully preserve all monuments, benchmarks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.

11. DIFFERING SITE CONDITIONS:

- A. Notice: The Contractor shall promptly, and before such conditions are disturbed, notify the Owner and Engineer in writing of:
 - 1) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents.
 - 2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The Owner and Engineer shall promptly investigate the conditions and if the Owner finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified by Change Order.
- B. Claims: No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required above. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- 12. PROTECTION OF WORK, PERSONS AND PROPERTY:** The Contractor shall maintain adequate protection of all his work, materials and equipment that are to be incorporated in the project; whether stored on or off the site, under the care, custody or control of the Contractor or his subcontractors. The Contractor shall also maintain adequate protection of other property at the site or adjacent thereto, including landscaping, irrigation, pavements, structures and utilities not designated for removal, relocation or replacement in the course of construction, as provided by law and the Contract Documents.

The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he shall designate a responsible member of his organization on the Work, whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner and Engineer.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of the Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within the building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water.

During the course of construction, the Contractor shall maintain free and unimpeded all required exits from the building. Barricades shall be so erected that traffic is separated and protected from the construction. Such exits shall not be closed at any time for any reason while the building is occupied nor at any time when the building is unoccupied except after written approval is given by the Owner and proper warning and directional signs are posted.

The Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary to assure the safe passage of pedestrians and automobiles.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; and he shall so act, without appeal, if so authorized or instructed. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement for extra

compensation. Notification of and report of such emergencies shall be made immediately to the Owner and Engineer.

When the whole or a portion of the Work is suspended for any reason, each Contractor shall properly cover over, secure and protect such of his work as may be liable to sustain injury from any cause.

- 13. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION:** The Contractor shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Engineer and Owner. The superintendent shall not be changed except with the consent of the Engineer and Owner, unless, the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Directions shall be confirmed in writing by the Contractor.

The Contractor shall give efficient supervision to the Work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Engineer and the Owner any error, inconsistency or omission which he may discover, but he shall not be liable to the Owner for any damage directly resulting from and to the extent proximately caused by any errors or deficiencies in the Contract Documents or other instructions by the Engineer.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Work. He shall lay out the Work in a manner satisfactory to the Engineer, making permanent records of all lines and levels required for excavation grading and foundations, and for all other parts of the Work.

- 14. SUBSTITUTIONS:** The Contractor will be held to have used in his base proposal and to furnish under the Contract those items of equipment and/or materials which are specifically identified in the specifications by a manufacturer's name, model, or catalog number, or which have been specifically approved in writing by the Engineer during the bidding period, in accordance with procedures established by the Engineer, and which have been listed in an Addendum prior to the bidding.

At the time of bidding, items of equipment of the Contractor's choice may be offered as alternates to the items named in the specifications by submitting with the proposal and on the form provided, identifying data on the articles proposed, together with a statement of the amount of addition or deduction from the base bid if the bidder's alternate is accepted. Prior approval by the Engineer is not required on items submitted as alternate bids.

After execution of the Contract, substitution of equipment and/or materials of makes other than those specifically named in the Contract Documents may be approved only for the following reasons:

General Conditions (continued)

- A. That the equipment or material proposed for substitution is, in the opinion of the Owner, equal to and/or superior to equipment and/or materials named in the specifications so far as performance, construction, efficiency and utility are concerned; and
- B. That the materials and/or equipment named in the specifications are no longer available or cannot be delivered to the job in time to complete the work in proper sequence due to conditions beyond the control of the Contractor; or
- C. That the equipment and/or materials proposed for substitution is of satisfactory quality, construction, efficiency and utility, and there is a substantial difference in price and/or delivery. To receive consideration under this subparagraph, such a request must be supported by documentary proof of quality and difference in price and/or delivery, if any, for both the specified and the proposed substitute material and/or equipment.

All requests for substitution must be submitted in writing with supporting documentation by or through the Contractor to the Engineer for initial review, before being submitted to the Owner for evaluation and final approval. In the absence of the Owner's written approval, no substitution of materials or methods will be allowed for any items specified in the Contract Documents.

In case of a difference in price occurring as a result of an approved substitution, the Owner shall receive all benefit of the difference in cost involved in the substitution. All substitutions will be approved by issuance of a formal Change Order as provided in these General Contract Conditions.

15. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES:

- A. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.
- B. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- C. Samples are physical examples which illustrate materials, finishes, equipment or workmanship and establish standards by which the Work will be judged.

Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

General Conditions (continued)

The Contractor shall review, approve, stamp and then submit to the Engineer: Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

The number of copies and format of submittals shall be as required by the Engineer, but shall include (1) copy of the original Shop Drawings and Product Data for the Owner.

The Engineer will, with reasonable promptness so as to cause no delay, check Shop Drawings, Product Data and Samples to determine whether specifications and drawings have been properly interpreted and design requirements fulfilled. All corrections or requests for re-submittal by the Engineer shall be clearly noted on the submittals and returned to the Contractor. The Contractor shall make any corrections required by the Engineer and shall re-submit the required number of corrected copies of submittals until approved.

The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals.

The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer. Such Work shall be in accordance with approved submittals.

When Shop Drawings, Product Data, Samples or similar submittals have been approved and stamped by both Contractor and Engineer a copy of each shall be immediately forwarded to the Owner.

- 16. CASH ALLOWANCE:** The Contractor shall include in the Contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such Contractors and for such sums as the Owner may direct, the contract sum being adjusted in conformity therewith. The Contractor declares that the contract sum includes such sums for

expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has filed a lien or has a reasonable objection due to previous legal claims.

17. CHANGES:

- A. Change Orders: The Owner may, at any time, by a written Change Order directed through the Engineer, without notice to the sureties and without invalidating the Contract, make changes in the drawings and/or specifications of the Contract and within the general scope thereof; order extra work; or make changes by altering, adding to, or deducting from the Work. If such changes cause an increase or decrease in the amount due under the Contract, or in the time required for its performance, an equitable adjustment shall be made on the Change Order and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within ten (10) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Owner, if it determines that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. No Change Order or other form of order or directive by the Owner or Engineer requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original Construction Agreement, shall be issued unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made.
- B. Price Differential: The change in Contract price resulting from a change in the Work shall be determined in one of the following ways:
- 1) By estimate and acceptance in a lump sum, with a maximum total combined mark-up to the Owner, for the Contractor and all affected subcontractors not to exceed fifteen percent (15%).
 - 2) By unit prices named in the Contract or subsequently agreed upon.
 - 3) If the parties are unable to agree on one of the above methods, then the amount shall be determined by force account under the following formula:
 - a) The actual cost of all direct labor performed (including foremen employed continuously on the Work, but not the salary, or any part thereof, of the Contractor's superintendent) and the actual materials furnished for and used in such work, less all available cash, trade, or other discounts;

General Conditions (continued)

- b) Rental for the use of such items of equipment as have an individual value in excess of One Thousand Dollars (\$1,000.00); provided that the amount of such rental charge and the length of time and probable cost of the use of such equipment shall have been authorized in writing by the Owner;
 - c) All proportionate sums paid for royalties, permits, and inspection fees;
 - d) All proportionate premiums for public liability insurance, worker's compensation, and other proper and necessary insurance, as well as all applicable payroll taxes;
 - e) Either a predetermined lump sum, fixed fee, or a fee of fifteen percent (15%), which fee shall be applied to the total of paragraphs a), b), and c) only, and shall constitute full compensation to the Contractor for all costs and expenses, including all overhead and profit, which are not otherwise enumerated above. Subcontractors, if employed by the Contractor on this part of the work, will receive such portion of the Contractor's fee as may be agreed and paid to them by the Contractor.
 - f) The Contractor shall keep and present, in such manner as the Owner may direct, an accurate accounting of all the foregoing costs, together with all supporting vouchers and other documentation, all subject to audit by the Owner.
- C. Minor Changes: In giving instructions, the Engineer shall have authority to make minor changes in the Work, which do not involve extra cost or extend the Contract completion date, and which are not inconsistent with the purposes of the building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Engineer, or a written order from the Engineer stating that the Owner has authorized the extra work or change. No claim for an addition to the Contract sum shall be valid unless ordered or authorized in the manner set forth in this paragraph.
- 18. CLAIMS FOR EXTRA COST:** If the Contractor claims that any instructions by drawings or otherwise, after the execution of the Contract, involve extra cost under the Contract which were not included in the original bid, he shall give the Owner and the Engineer written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedure shall then be as provided for changes in the Work. No such claim shall be valid unless so made. Any change in the Contract amount must be authorized by Change Order.

19. **DELAYS AND EXTENSION OF TIME:** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or of any employee of the Owner, or by any separate Contractor employed by the Owner, or by changes ordered in the Work, or by strikes, lockout, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's control, or by any cause which the Owner determines may justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may determine.

Extension of the contract completion time for delays due to weather will be considered only when such conditions are more severe and extended than those reflected by the ten-year average for the month as evidenced by Climatological data, U.S. Department of Commerce, for the Boulder area or specific building area, and only if a request for such extension of time is received by the owner within seven (7) days of the first day of each delay. Extensions of time due to weather or other allowable reasons will be granted on the basis of 1.4 calendar days credit for each working day lost, with each extension figured to the nearest whole calendar day. No more than thirty (30) calendar days' extension for weather will be allowed during the total construction period.

All requests for extensions of time shall be subject to the Owner's approval, and shall be made in writing to the Owner no more than seven (7) calendar days after the occurrence of the delay. If not so submitted, they shall not be allowed.

The Owner reserves the right to occupy any part of the structure on the original schedule, after suitable inspection of conditions, without waiving Owner's rights with respect to liquidated damages as provided in the Contract.

20. **INSPECTION OF WORK:** The Owner and Owner's representative shall at all times have access to the Work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's or Owner's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Owner timely notice of its readiness for inspection, and if the inspection is by another authority than the Owner, of the date fixed for such inspection.

Inspections by the Owner and the Engineer shall be promptly made. If any work should be covered up without approval or consent of the Owner and the Engineer, it must, if required by the Owner, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Owner, and if so ordered must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs, unless he shall show that the defect in the Work was caused by another Contractor engaged by the owner. In that event the Owner shall pay such cost, with the right to reimbursement from such other Contractor.

21. CORRECTION OF WORK:

- A. Correction of Work Before or After Completion: The Engineer or Owner has the authority to condemn work which is defective or does not conform to the Contract Documents. The Contractor, following written demand, shall promptly correct all work rejected by the Engineer or Owner as defective or as failing to conform to the Contract Documents whether observed before or within two (2) years after final completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Engineer's/and/or Consultant's additional services thereby made necessary. If the Contractor proceeds to build in or cover the item which has been rejected, he shall be totally responsible for the cost of removal and replacement of said item and removal and replacement of all necessary work surrounding or covering the item in order to produce a first class job. The obligation of the Contractor to correct the Work shall be in addition to, and not in limitation of, any other obligations imposed by law, the Contract Documents, or other rights of the Owner.
- B. Tests to Determine Conformance: Whenever in the opinion of the Engineer/Consultant the Owner, tests are essential to assure the professional evaluation of the Work which is subject to being rejected or condemned, the necessary number of tests will be performed by a consultant designated by the Owner. The recommendation of this consultant is final and all parties to the Contract will comply with the methods and extent of the corrections submitted in writing to the Owner and the Engineer by the designated consultant. The cost of the tests will become the Contractor's responsibility when corrections of any nature are recommended by the consultant to the investigated work; otherwise, the Owner will pay for all tests performed.
- C. Removal of Condemned Work: The Contractor shall promptly remove from the premises all work condemned by the Engineer or Owner as failing to conform to the Contract Documents, whether incorporated or not, and the Contractor shall promptly replace and re-execute such work in accordance with the Contract and without expense to the Owner, and shall bear the expense of making good all work of other subcontractors found to be defective or destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work within a reasonable time, fixed by written notice from the Owner, the Owner may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within (10) ten days' time thereafter, the Owner may, upon ten (10) days' written notice, sell such materials at auction or at private sale accounting for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor, including compensation for additional Engineer services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due

the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

- D. Correction of Work After Final Payment: Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which shall appear within a period of two (2) years from the Date of Completion. The Owner shall give notice of observed defects with reasonable promptness. Such notice shall be in writing to the Engineer and Contractor. All questions arising under this article shall be decided by the Owner or its authorized representative. This warranty shall be in addition to and not in lieu of all other remedies available to the Owner.

22. OWNER'S RIGHT TO CORRECT WORK:

- A. Corrections By Owner: If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this Contract, including, without limitation, the correction of punch list or warranty items, the Owner, after three (3) days' written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the reasonable cost thereof from any payment then or thereafter due the Contractor, and recover any deficiency from the Contractor. In the event work is performed by the Owner, the Owner's employees, or by persons other than the Contractor at the request of the Owner, as provided above or in order to comply with existing statutes, codes or regulations of any governmental authority or to protect the health and/or welfare of persons occupying or intending to occupy the Owner's building, the Owner shall not be liable to the Contractor for inconvenience, expense or subsequent cost of removal of such work.
- B. Deductions for Uncorrected Work: If the Owner deems it inexpedient to correct work that has been damaged, is defective, or has not been completed in accordance with the Contract Documents, an equitable deduction from the Contract price shall be made by Change Order therefor. The amount to be deducted as cost of doing work shall include the cost of the Engineer's/ Consultant's additional services made necessary by such default. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

23. OWNER'S RIGHT TO TERMINATE CONTRACT:

- A. For Cause: If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefits of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he should fail to make prompt payment to

General Conditions (continued)

subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, or otherwise breach any material provision of the Contract, then the Owner, when in its opinion sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and the surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the Work by whatever method it may deem best. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the Work including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his surety shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be determined by the Owner.

- 1) The Owner may take control of the Work and either make good the deficiencies of the Contractor or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event the Owner shall be entitled to collect from the Contractor and his surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the Contractor.
- 2) The Owner may require the surety on the Contractor's bond to take control of the Work at once and see to it that all the deficiencies of the Contract are made good, with due diligence. As between the Owner and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the Work, either upon termination of the services of the Contractor or upon instructions from the Owner to do so, the provisions of the Contract Documents shall govern in respect to the work done by the surety, the surety being substituted for the Contractor as to such provisions, including provisions as to payment for the Work and provisions of this article as to the right of the Owner to do the Work or to take control of the Work.

- B. Without Cause: Should conditions arise which in the Owner's opinion make it necessary or advisable to discontinue work under the Contract Documents, the Owner may terminate the Contract in whole or in part without cause or fault by the Contractor by giving seven (7) calendar days' written notice to the Contractor. The notice shall specify the date and extent to which the Contract is terminated. Upon any such termination, the Owner shall take possession of the site and all or any part of the materials and equipment delivered or en route to the site. In the event of termination under this paragraph 24(B) the Contractor shall be equitably paid for all work properly completed, based upon the approved Schedules of Values.

- 24. CONSTRUCTION SCHEDULE AND PROGRESS REPORTS:** The Contractor shall submit, within seven (7) calendar days after the date of the Notice to Proceed in a format acceptable to the Owner, a construction schedule for the project. This schedule shall start with the date of the Notice to Proceed, and the completion date shall be a date which will enable the Owner to accept the work on the date specified in the Construction Agreement. The Schedule shall fully indicate a timetable representing the various elements of the work and their logical relationships and shall provide for the expeditious and practicable execution of the Work. The time shown between the starting and completion dates of the various elements within the schedule shall represent one hundred percent (100%) completion of each element in the Schedule of Values. The CPM schedule shall include all activities necessary, including submittals, approval periods and Owner activities. No working activities shall be shown with durations exceeding fifteen (15) working days. If an activity is longer than this, it shall be segmented. The schedule shall identify for each activity the trades responsible and the manpower necessary to complete the activity as scheduled.

The Schedule shall be revised by the Contractor during the progress of the Work. When the actual progress in the opinion of the Engineer or Owner, varies materially from that previously approved, additional detailed schedules of separate elements of the work may be requested at the Owner's discretion.

The Contractor shall submit monthly Progress Reports and an updated schedule with the Application for Payment. These reports shall reflect the Contractor's "work in place" progress and will be certified by the Contractor or his superintendent as to the date and contents of such "work in place" progress report. Such reports shall depict progress and percentage of completion, consistent with the values and amounts contained on the counterpart Request for Payment. The subcontractors shall be supplied copies of the Contractor's approved schedule. These subcontractors shall develop a similar schedule based on their respective work. Failure to submit an approved schedule or monthly progress report shall be deemed cause to reject Applications for Payment.

The Contractor shall schedule all work so as to reduce to a minimum any disruption in the use of the existing facilities and interruptions of utility service of any type. All remodelling work or disruption of utilities to an occupied building shall be scheduled and submitted to the Owner and Engineer for approval.

- 25. SCHEDULE OF VALUES:** Before beginning work and prior to the first Application for Payment, the Contractor shall submit to the Owner a complete, itemized Schedule of the Values of the various parts of the work in format and level of detail as acceptable to the Owner, aggregating the total sum of the Contract, separating material costs from other costs, including as material costs the material costs of all subcontractors under such Contractor, supported by such evidence as to its correctness as the Owner may direct. This schedule will be used for the Application for Payment provided for in these General Contract Conditions.
- 26. PAYMENTS TO CONTRACTORS:** Partial payments will be made as the Work progresses within thirty (30) days after receipt of an acceptable invoice and billing backup,, or at other monthly dates established by the Owner, upon properly prepared Contractor's Application

General Conditions (continued)

and Certificate for Payment forms submitted to and approved by the Engineer and the Owner. The Owner reserves the right to withhold payments at any time, regardless of the Engineer's recommendations. The Applications for Payment shall be based on the same items as are shown in the Schedule of Values indicating the material used and work performed for which payment is claimed. In preparing Applications, material delivered and properly stored on the site and preparatory work done may be taken into consideration.

Payments will be made in the full value of the work performed and material stored less five percent (5%) of such value which shall be retained until the Date of Completion of all Work, unless otherwise agreed by Owner, and less the aggregate of any previous payments. On satisfactory completion and final acceptance of each separate building or portion of the building or other division of the Contract upon which agreement has been reached as to its separate price, at the discretion of the Owner, payment may be made in full, including retained percentages thereon less deductions as determined by the Owner. Any withdrawal of retainage based upon a deposit of acceptable securities shall be on the Owner's approved forms and shall require that the acceptable securities be endorsed in favor of the Owner, authorizing the Owner to negotiate the acceptable securities and to receive the payments due. Payments by the Contractor to his subcontractors shall be made in the same manner as provided herein between the Owner and the Contractor.

The Contractor warrants that title to and ownership of all material and work covered by partial payments which have been made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on his observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon final completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is, in the Engineer's opinion, entitled to payment in the amount certified.

After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner provided herein. No Certificate for a progress or final payment, nor any partial or entire use or occupancy of the project by the Owner shall constitute an acceptance of any work not completed in accordance with the Contract Documents.

27. **PAYMENTS WITHHELD:** The Owner may withhold payment or the Engineer/Consultant may decline to issue a Certificate for Payment in whole or in part, or the Engineer or Owner may withhold or nullify the whole or any part of any Certificate previously issued, because of subsequently discovered evidence or subsequent inspections, for such an amount or to such extent as may be necessary in the opinion of either to protect the Owner from loss on account of:
- A. Defective work not remedied.
 - B. Claims filed or reasonable evidence indicating probable filing of claims.
 - C. Failure of the Contractor to make payments properly and promptly to subcontractors or for material or labor.
 - D. A reasonable doubt that the Contract can be completed for the balance then unpaid.
 - E. Damage to another contractor.
 - F. Failure of the Contractor to prosecute any portion of the Work in compliance with the approved schedule.
 - G. Failure of the Contractor to submit on a timely basis any documentation required by the Contract Documents, including, without limitation, monthly Progress Reports, Schedule of Values, or request for approval of subcontractors.
 - H. Unauthorized deviations by the Contractor from the Contract Documents.
28. **INSURANCE - LIABILITY:** Each Contractor shall procure and maintain, at his own expense, until his work is accepted by the Owner, liability insurance as hereinafter specified. All such insurance shall be subject to the approval of the Owner for adequacy of protection, and shall include a provision preventing cancellation without thirty (30) days' prior notice to the Owner in writing. All policies must contain a "Registered Notice" of cancellation endorsement directed to Town of Lyons and the bonding company on the project. The Owner will accept the policies written only by sureties legally authorized in the State of Colorado and rated in Best's Insurance Guide (latest edition), not lower than A- or have a Best's Financial Rating of at least X.

The liability insurance coverage required is as follows:

- A. Contractor's General Public Liability and Property Damage Insurance issued to the Contractor and protecting him from all claims for destruction of or damage to property, arising out of or in connection with any operations under his Contract, whether such operations be by himself or by a subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him.

General Conditions (continued)

All such insurance shall be written with a limit of liability not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting there from sustained by any one person in any one occurrence; a limit of liability not less than \$1,000,000 for any such damages sustained by two or more persons in any one occurrence; a limit of liability not less than \$1,000,000 for all damages arising out of injury or destruction of property in any one occurrence, and \$2,000,000 aggregate. All such insurance shall be written on a Comprehensive Form of Policy.

In the event of any of the hazards or exposures, normally listed in standard policies as "Exclusions," are involved or required under this Contract, then such hazards or exposures shall be covered and protection afforded under the policy and such exclusions (x), (c) and (u), **as excerpted from standard policies**, must be removed from the policy as listed below:

- 1) "(x) Injury to or destruction of any property arising out of blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment."
 - 2) "(c) The collapse of or structural injury to any building or structure due to:
 - a) grading of land, excavating, burrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work; or
 - b) moving, shoring, underpinning, raising or demolition or any building or structure, or removal or rebuilding of any structural support thereof;"
 - 3) "(u) a) Injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling; or
b) injury to or destruction of property at any time resulting therefrom."
- B. General Public Liability and Property Damage Insurance issued to "Town of Lyons, Colorado, its directors, its officers, its agents, and its employees acting in the scope and course of their employment", and protecting them from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract, whether such operations be by the Contractor or by a subcontractor under him or by anyone directly or indirectly employed by the Contractor or a subcontractor under him. All such insurance shall have the minimum limits of liability specified in A, above. All such insurance policies shall be delivered to the Owner within ten (10) days after the date of the Notice of Award.

- C. Contractor's Automobile Liability and Property Damage Insurance issued to the Contractor protecting the Contractor and the Owner from all claims, for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the Contractor's Contract, whether such operations be by the Contractor or by a subcontractor under him or by any one directly or indirectly employed by the Contractor or a subcontractor under him. All such insurance shall be written with a limit of liability of \$1,000,000 each person, \$1,000,000 each occurrence, for Bodily Injury, and of \$1,000,000 each occurrence, for Property Damage. All such insurance policies shall be delivered to the Owner within ten (10) days after the date of the Notice of Award.
- D. The parties hereto understand and agree that the Owner is relying on and does not waive or intend to waive by this Contract any provision hereof, including the provision of this section, the monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as from time to time amended, or otherwise available to the Owner.
- 29. INSURANCE - WORKERS' COMPENSATION:** Each Contractor shall maintain at his own expense, until completion of the Work and final acceptance thereof by the Owner, Workers' Compensation Insurance, including occupational disease provisions, covering the obligations of the Contractor in accordance with the provisions of the laws of the State of Colorado. Each Contractor shall furnish the Owner with a certificate giving evidence that such Contractor is covered by the Workers' Compensation Insurance herein required, each certificate specifically stating that such insurance includes occupational disease provisions. All such certificates shall be furnished within ten (10) days after the date of the Notice of Award.
- 30. INSURANCE - BUILDER'S RISK COMPLETED VALUE:** The Contractor shall pay for and maintain Builder's Risk Completed Value Insurance, insuring the entire project and the Work against loss or damage caused by fire, malicious mischief, vandalism, and the hazards insured against in the standard extended coverage provisions used in the State of Colorado, which insurance shall remain in effect until 12:00 noon on the day following the Date of Completion and final acceptance of the entire project, whether or not the building or some part thereof is occupied in any manner prior to final acceptance of the project. Such insurance must be in an amount equal to the aggregate total of the contract prices in the Contracts entered into by the Owner relating to the project, and must be issued by a company or companies acceptable to the Owner. Each subcontractor shall reimburse the Contractor in part in respect of the premiums paid by the Contractor for such insurance, each subcontractor paying a portion of the total premiums in the same ratio as the ratio of the insurance represented by the contract price in his Contract to the total insurance carried.

Upon request by the Owner, the amount of such insurance shall be increased to include the cost of work to be done on the project, or materials or equipment to be incorporated in the project, by the Owner or under contracts let or to be let by the Owner not covered by these

General Contract Conditions. In such event, the Owner shall pay the Contractor as its share of the insurance premiums a portion of such premiums in the same ratio as the ratio of the insurance represented by such independent Contracts let or to be let by the Owner to the total insurance carried.

All such insurance shall insure the Owner and the Contractor, as their interests may appear, but the loss, if any, shall be payable to the Owner, as trustee, except as it may be necessary to permit payment of all or a portion of such insurance to a mortgagee as his interests may appear, and all such insurance policies shall be lodged with the Owner within ten (10) days after the date of the Notice of Award. The Owner shall have power to adjust and settle any loss with the insurers.

Unless the Owner and the Contractor shall agree otherwise, all moneys received shall be applied on rebuilding or repairing the destroyed or injured work. With the exception of insurance proceeds attributable to insurance paid for by the Owner (by paying its share of the premiums paid by the Contractor), such moneys shall be paid out by the Owner to the Contractor from time to time on estimates of the Owner.

All subcontractors shall supply the Contractor with such information as he may need to obtain such insurance, within time to enable the Contractor to obtain the insurance within the time limit stated above.

The Contractor and his subcontractors and suppliers waive all rights against the Owner for damages caused by fire or other perils to the extent covered by the Builder's Risk Insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner on their behalf. The Contractor shall require similar waivers of his subcontractors, sub-subcontractors, agents, and employees of any of them.

- 31. SEPARATE CONTRACTS:** The Owner reserves the right to let other Contracts in connection with the Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. His failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Owner any discrepancy between the executed work and the drawings.

32. **SUBCONTRACTS:** The Contractor shall within ten (10) days after the execution of the Contract or before awarding any subcontracts shall submit in writing to the Owner and Engineer a final list of all subcontractors and suppliers proposed. The Contractor shall not employ any to which the Owner may, within a reasonable time, object as incompetent, unfit, or otherwise undesirable. Substitutions of subcontractors named in the final list may not be made without written approval of the Owner.

If before or after the execution of the Contract, a change of any name on such list is required in writing by the Owner, the Contract price shall be increased or diminished by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

The Owner shall, on request, furnish to a subcontractor, wherever practicable, evidence of the amount certified on his account. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any direct contractual relation between any subcontractor and the Owner.

33. **CONTRACTORS' MUTUAL RESPONSIBILITY:** The entire project may be covered by more than one Contract and in such case there will of necessity be a certain overlapping of Contracts. Each Contractor shall, therefore, take due notice of the work called for in Contracts other than his own. Should the Contractor cause damage to any separate contractor on the Work, the Contractor agrees, upon due notice, to settle with such contractor by agreement, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and, if any judgment against the Owner arises there from, the Contractor shall pay or satisfy it and pay all costs and expenses thereby incurred by the Owner.

34. **CUTTING, PATCHING AND DIGGING:** The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the drawings and specifications for the completed unit, and he shall make good after them as the Owner may direct.

Any cost caused by defective or ill-timed work shall be borne by the persons responsible therefor. The Contractor shall not endanger any work by cutting, excavating, or otherwise altering any work, and shall not cut or alter the work of any other contractor save with the consent of the Owner or Engineer.

After such work has been installed, he shall carefully fit around, close up, repair, patch, and point up same as directed to the entire satisfaction of the Owner.

- 35. EMPLOYEES:** The Contractor and its subcontractors shall at all times enforce strict discipline and good order among its employees, and shall not employ on the work any person considered by the Engineer or the Owner to be unfit or not skilled in the work assigned to the Contractor. The Contractor shall be responsible to the Owner for the acts and omissions of all its employees.

The Contractor shall further be responsible for the acts and omissions of all subcontractors, their agents and employees, and all other persons acting on behalf of the Contractor or subcontractors as set forth herein.

During the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, creed, disability, sex or age.

- 36. CLEANING UP:** The Contractor shall at all times keep the premises free from accumulations of any type of waste material or rubbish caused by his employees or work, and shall remove all rubbish as often as directed by the Owner. At the completion of the Work he shall remove all his rubbish from and about the building, and all his tools, scaffolding, and surplus materials, shall wash all glass inside and outside throughout the building and remove all stains and other marks, paint or materials from windows and frames. Care shall be taken not to scratch the glass in this clean-up.

All floors and wall coverings shall be left thoroughly clean and finished, all walls and ledges shall be dusted, all plumbing fixtures shall be cleaned, all hardware shall be free of all paint, stains, dust, dirt and the like. The Contractor shall remove marks, stains, fingerprints, other oil, dirt from painted, decorated or natural finish work, and turn over the building to the Owner ready for occupancy except for being further equipped by the Owner. In case of dispute the Owner may remove the rubbish and charge the cost to the Contractor.

- 37. USE OF PREMISES:** The Contractor shall confine his apparatus, the storage of materials and the operations of his workers to limits indicated by law, ordinances, permits, or directions of the Owner and shall not unreasonably encumber the premises with his materials. The Contractor shall enforce the Owner's instructions regarding signs, advertisements, fires, and smoking.

During the performance of the Work, the Contractor and his subcontractors and their employees, agents or suppliers, will use such entrance or entrances to the construction site that may be designated from time to time by the Owner. Further, the Contractor and his subcontractors, their employees and agents shall perform the Work at such times of the day and days of the week as may be designated by the Owner from time to time.

- 38. LIQUIDATED DAMAGES FOR DELAY IN COMPLETION:** It is understood and agreed that completion of the entire project within the time stated in the Instructions to Bidders and the Construction Agreement is a matter of vital necessity to the Owner, that the Owner will sustain damages if the entire project is not completed within that time, and that it would not be possible to accurately determine the amount of such damages. In view of these

facts, the Contractor agrees to pay the Owner liquidated damages in the sum set forth in the Construction Agreement for each calendar day, if any, which elapses between the date stated in the Instructions to Bidders as the date when the entire project must have been finally completed and accepted, as extended by extensions of time under the provisions of the General Contract Conditions, and the Date of Completion. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the surety on his performance bond shall pay such damages. Also, the Owner may withhold all or any part of such liquidated damages from any payments due the Contractor. No changes in the Work shall extend the time for completion unless set forth on a properly approved Change Order.

If any part of such delay in the completion of the entire project shall be attributable to any default by any contractor other than the Contractor, the Contractor may recover from the contractor responsible for such delay such portion of the liquidated damages paid by the Contractor to the Owner as may be attributable to such other contractor.

- 39. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT:**
When the Work is complete and ready for final inspection, the Contractor shall file a written notice with the Engineer that the work, in the opinion of the Contractor, is complete under the terms of the Contract.

Within a reasonable time after the Contractor files written notice that the Work is complete, the Engineer, Owner and the Contractor shall make a "final inspection" of the project to determine whether the Work has been completed in accordance with the Contract Documents. A report of that inspection and a final punch list shall be made by the Engineer in sufficient detail to fully outline to the Contractor:

- A. Work to be completed if any;
- B. Work not in compliance with the drawings or specifications, if any;
- C. Unsatisfactory work for any reason, if any.

Copies of the punch list will be transmitted by the Engineer to the Contractor and Owner.

All prior estimates and payments shall be subject to correction in the final Application for Payment. When the Work has been certified as satisfactory by the Owner, and the Engineer, and approved by action of the Owner's Board of Trustees, it shall be deemed accepted upon issuance of the Owner's Letter of Acceptance, which shall also state the Date of Completion.

Upon submission of the final Application for Payment, the time of final settlement for the Work shall be set and shall, thereupon, be advertised by two (2) publications of notice thereof, the last publication appearing at least ten (10) days prior to the time of final settlement. Final payment and settlement in full shall be made at the time of final settlement thus advertised, or as soon thereafter as practicable, in the judgment of the Owner, after resolution of claims and backcharges. The Owner shall not authorize final payment until all the items on the final punch list are complete, all operation and maintenance manuals accepted and all close-out documents filed with the Owner.

General Conditions (continued)

If the Work shall be substantially completed, but final completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Contractor, the Owner may, in its discretion, release to the Contractor such amounts as may be in excess of three (3) times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Engineer and approved by the Owner.

Neither the final payment nor any part of any sums withheld shall become due until the Contractor delivers to the Owner receipts showing complete payment for all labor, materials, supplies and equipment expended upon or incorporated in the work under the Contractor's Contract with the Owner. If any unpaid claim for such labor, materials, supplies, or equipment is filed with the Owner before payment in full of all sums due the Contractor sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or his duly authorized agent or assignee. However, as provided by statute, such funds shall ordinarily not be withheld longer than ninety days following the date fixed for final settlement with the Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action shall be commenced within that time to enforce such unpaid claim and a Notice of Lis Pendens be filed with the Owner. At the expiration of such ninety day period, the Owner shall pay the Contractor such moneys and funds as are: i) not the subject of a backcharge or retention by the Owner under the Contract Documents or ii) not the subject of suit and a Notice of Lis Pendens. The Owner ~~and~~ shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of such judgment as may result from such suit.

If any claim for such labor, materials, supplies, or equipment remains unsatisfied after all payments are made by the Owner to the Contractor, the Contractor shall refund to the Owner all sums which the latter may for any reason be compelled to pay to satisfy such claim, including all costs and attorney's fees incurred by the Owner as a result of the Contractor's default in such respect.

The making and acceptance of the final payment shall not constitute a waiver nor an accord and satisfaction of any claims by the Owner, including, among other things, those arising from unpaid claims, from faulty work appearing before or after final payment or from failure to comply with requirements of the Contract Documents.

- 40. WARRANTIES:** Each Contractor shall, in case of work performed for which warranties are required by the specifications, secure the required warranties and deliver copies thereof to the Owner upon completion of the work bound into the operations and maintenance manuals. All such warranties shall commence from the date set forth in the Owner's Letter of Acceptance and will not in any way lessen the Contractor's responsibilities under his Contract. Whenever guarantees or warranties are required by the specifications for a longer period than two (2) years, such longer period shall govern.

In addition to warranties, guarantees, operating instructions, etc., elsewhere specified, the Contractor, at the conclusion of the Work and before final payment is made, shall furnish a

listing, giving names, addresses, and telephone numbers of all subcontractors and material suppliers who furnished labor or materials on the job, with identification of the services rendered. There shall be provided one copy for the Engineer and three (3) copies for the Owner, bound into the operations and maintenance manuals.

- 41. GUARANTEE AFTER COMPLETION:** The Contractor expressly warrants and guarantees that the project will be constructed in a first-class, workmanlike manner in all respects; that it will be safe, free from structural defects and defects in workmanship and materials; and that the improvements will be suitable and fit for occupancy and for the purpose for which they were intended.

Neither the Engineer or Owner's final estimate, Board of Trustees approval, nor payment of the Final Application for Payment or of any sum withheld from the Contractor, shall relieve the Contractor of responsibility for his warranty or for faulty materials or workmanship. Unless otherwise specified below, the Contractor shall remedy any defects due thereto, and pay for any damages resulting therefrom, which shall appear within a period of two (2) years from the Date of Completion set forth in the Owner's Letter of Acceptance. The Contractor's guarantee shall not extend to manufactured equipment which has been specified and purchased for the project and for which a separate guarantee has been issued to the Owner by such manufacturer.

The Owner, Engineer, and the Contractor together shall make at least three (3) complete inspections of the Work after the work has been accepted by the Owner. One such inspection shall be made approximately six (6) months after the acceptance of the Work; and another such inspection shall be made approximately twelve (12) months after the acceptance of the Work; and a third such inspection shall be made twenty-three (23) months after the acceptance of the Work. The Engineer shall make a written report of these inspections certified as to contents and date of inspection, and forward these reports by mail to the Owner and Contractor within seven (7) days after completion of the inspections. The Contractor shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a satisfactory manner.

If the Contractor fails to promptly correct all deficiencies and defects shown by the report, the Owner may do so itself, after giving the Contractor ten (10) days' written notice of its intention to do so. The Owner shall be entitled to collect from the Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as damages resulting from such deficiencies and defects. The guarantee and warranties of the Contractor are in addition to and not in lieu of any other remedies available to the Owner.

- 42. MISCELLANEOUS KEYS, SWITCHES, ETC:** Except as otherwise specifically required by the technical specifications at the completion of the project, all loose keys for hose bibbs, adjustment keys and wrenches for door closers and panic hardware, keys for electric switches, electrical panels, and all other equipment shall be identified and accounted for and turned over to the Engineer for transmittal to the Owner.

43. **INDEMNIFICATION:** The Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent 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, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner or its agents or employees by any employee 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, the indemnification obligation under this article 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 Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

44. **LABOR DISPUTES:** Notwithstanding any other provision contained elsewhere herein, and superseding any contrary term expressed herein, the Contractor agrees that in the event of any picket or other form of labor dispute at the construction site, whether that dispute or picket is in connection with the Contractor, subcontractor or any other person or entity on the construction site, the Contractor will continue to perform the Work required herein without interruption or delay. In the event the Contractor fails to continue the performance of the Work included herein, without interruption or delay, because of such picket or other form of labor dispute, the Owner may terminate the services of the Contractor after giving forty-eight (48) hours written notice of an intent to do so. The terminated Contractor may then be replaced at the discretion of the Owner and all extra costs involved in doing so shall be payable by the terminated Contractor.

During the performance of the Work required by the Agreement, the Contractor and his subcontractors and their employees, agents or suppliers, will use such entrance or entrances to the construction site that may be designated from time to time by the Owner. Further, the Contractor and his subcontractors, their employees and agents shall perform the Work at such times of the day and days of the week as may be designated by the Owner from time to time.

45. **LIMITATION OF ACTIONS:** Any actions against the Contractor, his subcontractors, suppliers or others providing materials or services for the project, to recover damages for injury or loss to person or property, including loss or damage to the Work or the project itself, or defects in materials, caused by the design, planning, supervision, inspection, manufacture, supplying, construction or observation of construction of the project shall be brought within six (6) years after such claim for relief arises and the nature, extent and cause is fully discovered. In no case shall such an action be brought more than fifteen (15) years after the Date of Completion and acceptance of the project.

46. **COLORADO PREFERENCES:** In compliance with Colorado Revised Statutes, §§

8-17-101 and 8-17-102, preference shall be given to Colorado labor in the several classifications of skilled and common labor, and not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed shall be Colorado labor. The term "Colorado labor" means any person who has been a bona fide resident of the State of Colorado at the time of employment without discrimination as to race, color, creed, religion, age, sex, national origin, or disability. By reference, the entire provisions of said statutes are made a part of this section.

In compliance with Colorado Revised Statutes, § 8-19-101, preference shall be given to Colorado resident bidders against nonresident bidders from another state or foreign country. Preference shall be equal to the preference of a nonresident bidder in the state or foreign country, in which the nonresident bidder is a resident.

- 47. SALES AND USE TAX REFUND:** The Contractor shall consult and coordinate with the Owner to ascertain whether a sales or use tax may be collectable on purchases of materials, supplies and equipment used for this project by the Contractor. Whenever possible, the Contractor shall have materials, supplies, and equipment for this project delivered to the construction site by common carrier, conveyance by the seller, or by mail to avoid city or municipal sales and use taxes for which refunds will not be made to the Owner.

The Owner is exempt from the payment of any State sales and use taxes for materials, supplies and equipment used upon this project by the Contractor and subcontractors. For the purpose of exercising such exemption, the Contractor and all his subcontractors shall be responsible for the fulfillment of the following requirements:

- A. The Contractor and all subcontractors shall apply for and obtain a Certificate of Exemption of State sales/use taxes for the project from the Colorado Department of Revenue. A copy of such shall be filed with the Owner. No materials shall be purchased nor shall any work be commenced hereunder until such certificate is obtained.
- B. The final bill submitted by the Contractor for final payment shall show the net cost of all materials purchased by the Contractor and all subcontractors.
- C. At the time of final completion, the Contractor and his subcontractors shall execute affidavits, in duplicate, showing the amount of local municipal sales or use taxes, if any, paid by the Contractor or subcontractors upon materials used on the project, which affidavits shall further state that all such materials have been "built in" to the project, and where books and records and other substantiating evidence of payment of said tax are located and where they may be examined by appropriate governmental authorities, if such examination is required.
- D. The Contractor and all subcontractors shall maintain sufficient records to verify the amount of sales and use taxes paid to any local governmental entity. Failure to keep such records, resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor or subcontractor

General Conditions (continued)

liable for the amounts of such tax refund as determined by the Engineer's cost estimates of such materials.

- 48. LIENS AND CLAIMS:** Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, § 38-26-107, Colorado Revised Statutes, as amended, provides relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of particular public work, in that final payment may not be made to a Contractor until all such creditors have been put on notice by publication press of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims. See Completion, Final Inspection, Acceptance and Final Payment.