

# City and County of Denver



**D E N V E R**  
THE MILE HIGH CITY

DEPARTMENT OF AVIATION  
DEPARTMENT OF PUBLIC WORKS

## **STANDARD SPECIFICATIONS FOR CONSTRUCTION GENERAL CONTRACT CONDITIONS**

2011 Edition

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**CONSTRUCTION CONTRACT GENERAL CONDITIONS  
TABLE OF CONTENTS**

Page Number

<b>TITLE 1 - DEFINITIONS .....</b>	<b>1</b>
101 CITY .....	1
102 CONTRACT .....	1
103 CONTRACT AMOUNT .....	1
104 CONTRACT DOCUMENTS .....	1
105 CONTRACT TIME .....	1
106 CONTRACTOR .....	2
107 CONTRACTOR PERSONNEL .....	2
108 DAYS .....	2
109 DEPUTY MANAGER .....	2
110 DESIGNER .....	2
111 FINAL COMPLETION .....	2
112 MANAGER .....	3
113 PRODUCT DATA .....	3
114 PROJECT .....	3
115 PROJECT MANAGER .....	3
116 SAMPLES .....	3
117 SHOP DRAWINGS .....	3
118 SUBCONTRACTOR .....	3
119 SUBSTANTIAL COMPLETION .....	3
120 SUPPLIER .....	4
121 WORK .....	4
<b>TITLE 2 – CITY ADMINISTRATIVE ORGANIZATIONS; LINE OF AUTHORITY .....</b>	<b>5</b>
201 DEPARTMENT OF AVIATION .....	5
202 MANAGER OF AVIATION .....	5
203 DEPARTMENT OF PUBLIC WORKS .....	5
204 MANAGER OF PUBLIC WORKS .....	5
205 BUILDING INSPECTION .....	5
206 ZONING .....	5
207 DIVISION OF SMALL BUSINESS OPPORTUNITY .....	6
208 CITY AUDITOR .....	6
209 MANAGER OF FINANCE .....	6
210 CITY ATTORNEY .....	6
211 OFFICE OF RISK MANAGEMENT .....	6
212 CITY’S CONTRACT ADMINISTRATION LINE OF AUTHORITY .....	6
213 CITY’S COMMUNICATIONS WITH THE CONTRACTOR .....	7
<b>TITLE 3 - CONTRACTOR PERFORMANCE AND SERVICES .....</b>	<b>8</b>
301 CONSIDERATION (CONTRACTOR’S PROMISE OF PERFORMANCE) .....	8
302 NOTICE TO PROCEED AND COMPLETION OF THE WORK .....	8
303 EXACT CONTRACTOR PERFORMANCE .....	8
304 SUBSTITUTED PERFORMANCE .....	8
305 WORK PERFORMED UNDER ADVERSE WEATHER CONDITIONS .....	9
306 WORKING HOURS AND SCHEDULE .....	9
307 CONTRACTOR’S SUPERINTENDENT .....	10
308 COMMUNICATIONS .....	10

**CONSTRUCTION CONTRACT GENERAL CONDITIONS  
TABLE OF CONTENTS**

309	CONTRACTOR SUBMITTALS AND OTHER WRITTEN COMMUNICATIONS TO THE CITY.....	10
310	COMPETENCE OF CONTRACTOR'S WORK FORCE.....	11
311	NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE CONTRACT.....	11
312	CONDUCT OF CONTRACTOR'S PERSONNEL .....	12
313	SUGGESTIONS TO CONTRACTOR.....	12
314	WORK FORCE .....	12
315	CONSTRUCTION MACHINES AND STANBY EQUIPMENT .....	13
316	CUTTING AND PATCHING THE WORK .....	13
317	PERMITS AND LICENSES .....	13
318	CONSTRUCTION SURVEYS .....	14
319	PRESERVATION OF PERMANENT LAND SURVEY CONTROL MARKERS.....	14
320	TRADEMARKS, COPYRIGHTS AND PATENTED DEVICES, MATERIALS, AND PROCESSES.....	15
321	PROJECT SIGNS.....	15
322	PUBLICITY AND ADVERTISING .....	16
323	TAXES .....	16
324	DOCUMENTS AND SAMPLES AT THE SITE.....	17
325	CLEANUP DURING CONSTRUCTION.....	17
326	SANITARY FACILITIES.....	18
327	POWER, LIGHTING, HEATING, VENTILATING, AIR CONDITIONING AND WATER SERVICES .....	18
<b>TITLE 4 - CONTRACT DOCUMENTS (DRAWINGS AND SPECIFICATIONS) .....</b>		<b>19</b>
401	CONTRACT DOCUMENTS - REVIEW AND INTERPRETATION .....	19
402	OWNERSHIP OF CONTRACT DRAWINGS AND TECHNICAL SPECIFICATIONS.....	20
403	CONTRACT DRAWINGS AND TECHNICAL SPECIFICATIONS ISSUED TO THE CONTRACTOR.....	20
404	REQUESTS FOR INFORMATION OR CLARIFICATION .....	21
405	SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.....	21
406	SUBSTITUTION OF MATERIALS AND EQUIPMENT .....	22
<b>TITLE 5 - SUBCONTRACTS.....</b>		<b>24</b>
501	SUBCONTRACTS.....	24
502	SUBCONTRACTOR ACCEPTANCE.....	24
<b>TITLE 6 - TIME OF COMMENCEMENT AND COMPLETION.....</b>		<b>27</b>
601	BEGINNING, PROGRESS AND TIME OF COMPLETION .....	27
602	LIQUIDATED DAMAGES, ADMINISTRATIVE COSTS; ACTUAL DAMAGES.....	27
603	DELAY DAMAGES .....	28
<b>TITLE 7 - COOPERATION, COORDINATION AND RATE OF PROGRESS .....</b>		<b>29</b>
701	COOPERATION WITH OTHER WORK FORCES .....	29
702	COORDINATION OF THE WORK.....	30
703	COORDINATION OF PUBLIC CONTACT .....	30
704	RATE OF PROGRESS.....	30
<b>TITLE 8 - PROTECTION OF PERSONS AND PROPERTY .....</b>		<b>32</b>
801	SAFETY OF PERSONS.....	32
802	PROTECTIVE DEVICES AND SAFETY PRECAUTIONS .....	33

**CONSTRUCTION CONTRACT GENERAL CONDITIONS  
TABLE OF CONTENTS**

803	PROTECTION OF PROPERTY AND WORK IN PROGRESS .....	33
804	PROTECTION OF MUNICIPAL, PUBLIC SERVICE OR UTILITY SYSTEMS.....	34
805	PROTECTION OF STREET AND ROAD SYSTEM .....	35
806	PROTECTION OF DRAINAGE WAYS .....	36
807	PROTECTION OF THE ENVIRONMENT .....	36
808	HAZARDOUS AND EXPLOSIVE MATERIALS OR SUBSTANCES .....	37
809	ARCHEOLOGICAL AND HISTORICAL DISCOVERIES .....	37
<b>TITLE 9 - COMPENSATION.....</b>		<b>38</b>
901	CONSIDERATION (CITY'S PROMISE TO PAY).....	38
902	PAYMENT PROCEDURE .....	38
903	SCHEDULE OF VALUES IN LUMP SUM CONTRACTS.....	39
904	UNIT PRICE CONTRACTS.....	39
905	PROGRESS PERIOD.....	39
906	APPLICATIONS FOR PAYMENT .....	40
907	RELEASES AND CONTRACTORS CERTIFICATION OF PAYMENT.....	41
908	RETAINAGE .....	41
909	ADDITIONAL WITHHOLDING OF PROGRESS PAYMENTS.....	42
910	FINAL ESTIMATE AND PAYMENT .....	43
911	ACCOUNTING OF COSTS AND AUDIT .....	43
<b>TITLE 10 - WAGES.....</b>		<b>45</b>
1001	PREVAILING WAGE ORDINANCE .....	45
1002	POSTING OF THE APPLICABLE WAGE RATES .....	45
1003	RATE AND FREQUENCY OF WAGES PAID .....	45
1004	REPORTING WAGES PAID.....	45
1005	FAILURE TO PAY PREVAILING WAGES .....	46
<b>TITLE 11 - CHANGES IN THE WORK, CONTRACT PRICE OR CONTRACT TIME .....</b>		<b>47</b>
1101	CHANGE ORDER .....	47
1102	CITY INITIATED CHANGES .....	47
1103	CONTRACTOR CHANGE REQUEST .....	48
1104	ADJUSTMENT TO CONTRACT AMOUNT .....	51
1105	TIME EXTENSIONS .....	54
<b>TITLE 12 - CONTRACTOR CLAIMS FOR ADJUSTMENT AND DISPUTES.....</b>		<b>56</b>
1201	NOTICE OF INTENT TO CLAIM .....	56
1202	SUBMITTAL OF CLAIMS .....	56
1203	WAIVER OF CLAIMS .....	58
<b>TITLE 13 - DISPUTES .....</b>		<b>59</b>
1301	DISPUTES.....	59
<b>TITLE 14 - SITE CONDITIONS.....</b>		<b>60</b>
1401	DIFFERING SITE CONDITIONS.....	60
1402	SITE INSPECTIONS AND INVESTIGATIONS .....	60

**CONSTRUCTION CONTRACT GENERAL CONDITIONS  
TABLE OF CONTENTS**

<b>TITLE 15 - PERFORMANCE AND PAYMENT BONDS .....</b>	<b>62</b>
1501 SURETY BONDS .....	62
1502 PERFORMANCE BOND.....	62
1503 PAYMENT BOND.....	62
<b>TITLE 16 - INSURANCE AND INDEMNIFICATION.....</b>	<b>63</b>
1601 INSURANCE.....	63
1602 DEFENSE AND INDEMNIFICATION.....	63
<b>TITLE 17 - INSPECTION AND DEFECTS .....</b>	<b>64</b>
1701 CONSTRUCTION INSPECTION BY THE CITY .....	64
1702 AUTHORITY OF INSPECTORS .....	64
1703 OBSERVABLE DEFECTS .....	64
1704 DEFECTS - UNCOVERING WORK .....	64
1705 LATENT DEFECTS .....	65
1706 REMOVAL OF DEFECTIVE MATERIALS AND WORK.....	65
<b>TITLE 18 - WARRANTIES, GUARANTEES AND CORRECTIVE WORK.....</b>	<b>66</b>
1801 CONTRACTOR'S WARRANTIES, GUARANTEES AND CORRECTION OF WORK.....	66
1802 PERFORMANCE DURING WARRANTY PERIOD .....	67
<b>TITLE 19 - SUBSTANTIAL COMPLETION OF THE WORK .....</b>	<b>69</b>
1901 CONTRACTOR'S NOTICE OF SUBSTANTIAL COMPLETION.....	69
1902 INSPECTION AND PUNCH LIST.....	69
1903 CERTIFICATE OF SUBSTANTIAL COMPLETION .....	69
1904 RIGHT OF EARLY OCCUPANCY OR USE.....	69
<b>TITLE 20 - FINAL COMPLETION AND ACCEPTANCE OF WORK .....</b>	<b>71</b>
2001 CLEAN-UP UPON COMPLETION .....	71
2002 FINAL COMPLETION AND ACCEPTANCE OF THE WORK.....	71
2003 FINAL SETTLEMENT .....	71
<b>TITLE 21 - SUSPENSION OF WORK .....</b>	<b>74</b>
2101 SUSPENSION OF WORK .....	74
2102 SUSPENSION OF THE WORK FOR THE CITY'S CONVENIENCE.....	74
2103 SUSPENSION BECAUSE OF ORDER OF CITY, STATE OR FEDERAL COURT OR AGENCY .....	75
2104 SUSPENSION RESULTING FROM CONTRACTOR'S FAILURE TO PERFORM .....	75
<b>TITLE 22 - CITY'S RIGHT TO TERMINATE THE CONTRACT .....</b>	<b>76</b>
2201 TERMINATION OF CONTRACT FOR CAUSE.....	76
2202 TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY .....	77
<b>TITLE 23 - MISCELLANEOUS PROVISIONS .....</b>	<b>80</b>
2301 PARTIES TO THE CONTRACT.....	80
2302 FEDERAL AID PROVISIONS .....	80

**CONSTRUCTION CONTRACT GENERAL CONDITIONS  
TABLE OF CONTENTS**

2303	NO WAIVER OF RIGHTS .....	80
2304	NO THIRD PARTY BENEFICIARY .....	80
2305	GOVERNING LAW; VENUE .....	80
2306	ABBREVIATIONS .....	81
2307	STATUTE OF LIMITATIONS IN C.R.S. § 13-80-102(1)(h) .....	81
<b>INDEX</b>	.....	<b>i-ix</b>

# CONSTRUCTION CONTRACT GENERAL CONDITIONS

## TITLE 1 - DEFINITIONS

### 101 CITY

"City" means the City and County of Denver, a municipal corporation, organized under and by virtue of Article XX of the Constitution of the State of Colorado.

### 102 CONTRACT

The "Contract" consists of the executed Contract Form and all of the Contract Documents.

### 103 CONTRACT AMOUNT

"Contract Amount" means the total amount of money payable to the Contractor under the Contract.

### 104 CONTRACT DOCUMENTS

"The Contract Documents" consist of the documents which are listed in the Contract Form. The documents which are generally included are listed below:

- Advertisement of Notice of Invitation for Bid
- Instructions to Bidders
- Bid Bond
- Addenda
- Bid Forms
- Affirmative Action/SBE/MBE/WBE/DBE Documents
- Notice to Apparent Low Bidder
- Contract Form
- Performance and Payment Bond
- Certificate of Insurance
- Notice to Proceed
- Change Orders
- Final Receipt or Certificate of Contract Release
- Prevailing Wage Rate Schedule
- General Conditions
- Special Conditions
- Equal Employment Opportunity Provisions
- Federal Requirements (if applicable)
- Technical Specifications
- Contract Drawings
- Accepted Shop Drawings

### 105 CONTRACT TIME

"Contract Time" is the total number of days provided in the Contract Documents from the date of the Notice to Proceed to the date of Final Completion of the Work. Substantial Completion shall occur prior to Final Completion. Contract Time may be further defined and divided into phases

by the Technical Specifications or Special Conditions. The Contract Documents may require completion on or before a certain specified date. The date of the Notice to Proceed is considered the first day of the Contract Time.

#### **106 CONTRACTOR**

"Contractor" means the person, partnership, corporation, limited liability company, joint venture, or other entity that has contracted with the City to perform the Work as an independent contractor.

#### **107 CONTRACTOR PERSONNEL**

"Contractor Personnel" means all employees, officers, superintendents of, or persons engaged as independent contractors by the Contractor, or any of its Subcontractors and Suppliers of any tier who perform work under the Contract or who enter the Work site.

#### **108 DAYS**

"Days" means consecutive calendar days unless specifically designated otherwise and includes weekends, holidays, or days of normal inclement weather. It will be presumed that the Contractor, at the time of bidding, took into account the number of days which might be unavailable for Work during the Contract Time.

#### **109 DEPUTY MANAGER**

The "Deputy Manager" means the official who reports directly to the Manager or to another official who exercises supervisory responsibility in the City agency defined in Title 2 herein that is responsible for the Project.

#### **110 DESIGNER**

"Designer," also sometimes referred to as "Design Professional," "Design Consultant" or "Designer of Record," means the engineer or architect who designed the Project and prepared the drawings and specifications. The Designer may be an employee of the City or may be retained by the City as an independent contractor under a professional services contract, and is identified in the Contract Documents. The Designer may be requested to interpret drawings and specifications and review and approve Shop Drawings, Product Data, Samples, and other documents. The Designer, when directed by the City to do so, observes the Work as it is performed, monitors critical construction activities identified in the Contract Documents and participates in the final inspection of the Work, all in coordination with the Project Manager. The Designer may also participate in the preparation and approval of progress and final payment requests.

#### **111 FINAL COMPLETION**

"Final Completion" of the Work occurs following Substantial Completion and when the Project Manager confirms in writing that the Contractor has completed the Work in accordance with the Contract, including completion of all punch list items, cleanup work and delivery of all required guarantees, warranties, licenses, releases and other required deliverables.



## **112 MANAGER**

"Manager" means the Manager of Aviation, if the Contract is entered into under the authority of the Department of Aviation; or it means the Manager of Public Works, if the Contract is entered into under the authority of the Department of Public Works. The department is identified in the Contract Documents. Wherever the term "Manager" is used in the Contract Documents, such term refers only to the Manager of Aviation or Public Works, as appropriate, and not to any individual to whom the Manager has delegated authority.

## **113 PRODUCT DATA**

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, warranties and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

## **114 PROJECT**

"Project" means the total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents and may include construction by separate contractors.

## **115 PROJECT MANAGER**

The "Project Manager" is the City representative who has day to day administrative responsibility of the Project under the Contract.

## **116 SAMPLES**

"Samples" means physical examples that illustrate materials, equipment, or reasonable workmanship, and establish standards by which the Work will be judged.

## **117 SHOP DRAWINGS**

"Shop Drawings," sometimes also referred to as "Supplemental Drawings," means drawings, diagrams and other data specifically prepared for the Work by the Contractor, any Subcontractor, manufacturer, Supplier, or distributor, to illustrate some portion of the Work and which will be used in the construction of the Work when reviewed and accepted for such use by the Designer or the City.

## **118 SUBCONTRACTOR**

"Subcontractor" means a person or entity having a contract with the Contractor or other Subcontractor of any tier to perform work at the Work site, including the provision of labor, materials, equipment, supplies, tools, services, or other items or services, or any combination thereof. However, this definition is not intended to limit in any way the prevailing wage obligations of the Contractor, as defined by federal, state or local law, or to alter the statutory rights of Subcontractors.

## **119 SUBSTANTIAL COMPLETION**

"Substantial Completion" of the Work means the Work has progressed to the point that the City can beneficially occupy or utilize the Work for the purpose for which it is intended, and the Work complies with all applicable codes and regulations, including, if required, issuance of a certificate of occupancy, or certificate of suitability for use from the appropriate governmental

agencies, as determined by the Manager in his sole discretion. The Deputy Manager will advise the Contractor in writing when Substantial Completion of the Work has been achieved.

#### **120 SUPPLIER**

"Supplier" means any material or equipment Supplier having a contract with the Contractor, a Subcontractor, Supplier, or other entity of any tier, to furnish or deliver materials, supplies, tools, equipment, or other items to the Project, but not performing labor at the Work site. However, this definition is not intended to limit in any way the prevailing wage obligations of the Contractor, as defined by federal, state or local law, or to alter the statutory rights of Suppliers.

#### **121 WORK**

"Work" means the construction and services required by the Contract Documents and includes all labor, management, administration, supervision, materials, supplies, manufactured components, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

## **TITLE 2 - CITY ADMINISTRATIVE ORGANIZATIONS; LINE OF AUTHORITY**

### **201 DEPARTMENT OF AVIATION**

Vested exclusively in the Department of Aviation are the management and control of designing, planning, construction, reconstruction, and remodeling of all Denver Municipal Airport System facilities. The unit of the Department of Aviation that is responsible for this management and control is identified in the Construction Contract Special Conditions.

### **202 MANAGER OF AVIATION**

The officer in full charge and control of the Department of Aviation is the Manager of Aviation.

### **203 DEPARTMENT OF PUBLIC WORKS**

Vested exclusively in the Department of Public Works are the management and control of the design and construction of general and local public improvements undertaken by the City and County of Denver, except for: (i) work which is under the management and control of the Department of Aviation; (ii) that work performed by the Denver Board of Water Commissioners; (iii) any such work that the Mayor has specifically assigned to another department or agency; and (iv) work under the authority of the Department of Public Works that is performed with the permission of the Manager of Public Works by private entities at their own expense. The unit of the Department of Public Works that is responsible for the administration of this Contract is identified in the Construction Contract Special Conditions.

### **204 MANAGER OF PUBLIC WORKS**

The officer in full charge and control of the Department of Public Works is the Manager of Public Works.

### **205 BUILDING INSPECTION**

The Building Inspection Division is a unit of the City's Community Planning and Development Department. It reviews all drawings and specifications for buildings and structures for compliance with the City's currently adopted Building Code. The Building Inspection Division issues building permits and performs construction inspections for code conformance.

### **206 ZONING**

The Community Planning and Development Department's Zoning Administration unit ("Zoning") is the City agency that reviews site plans and parking arrangements that are not located within the City's Municipal Airport System for compliance with ordinance requirements. Zoning's approval is required prior to release of most building permits. The Contractor must obtain a permit from Zoning to allow storage of equipment, trailers, or materials at a location at or near a construction site, if such location is not within the City's Municipal Airport System. Certificates of Occupancy must be signed by an authorized representative of Zoning prior to their release by the Building Inspection Division. Fee information is available from Zoning. Approvals hereunder are granted or denied in the sole discretion of Zoning.

## **207 DIVISION OF SMALL BUSINESS OPPORTUNITY**

The Director of the Division of Small Business Opportunity (“DSBO”) or persons under the Director's administrative control will review the employment practices of the Contractor and the utilization by the Contractor of Small Business Enterprises (SBE), Minority and Women Business Enterprises (M/WBE) or Disadvantaged Business Enterprises (DBE), as applicable, at all levels of Subcontractors and Suppliers in connection with work performed under the Contract. The reviews will be made to determine whether or not all applicable rules, regulations, ordinances, and laws governing equal employment opportunity, affirmative action programs and SBE, M/WBE, or DBE requirements are complied with. This Office is an independent City agency.

## **208 CITY AUDITOR**

The City Auditor, an independent elected official, reviews certified payrolls for compliance with prevailing wage requirements before payment is made to the Contractor.

## **209 MANAGER OF FINANCE**

The City's Manager of Finance pays the Contractor for Work approved under the Contract. The Manager of Finance is also the City official responsible for collection of taxes and other monies due to the City.

## **210 CITY ATTORNEY**

The City Attorney represents the City in all legal matters. Before the City executes a construction contract, the City Attorney must have approved the contract for legality and must also have been satisfied that the insurance certificates or policies and the bonds offered by the Contractor satisfy the insurance and bonding requirements in the Contract.

## **211 OFFICE OF RISK MANAGEMENT**

The Office of Risk Management establishes and approves the kinds and amounts of insurance required under each construction contract. Upon submission by the Contractor of proof of such insurance, the Risk Management Administrator, in conjunction with the City Attorney, will review such submissions for acceptability.

## **212 CITY'S CONTRACT ADMINISTRATION LINE OF AUTHORITY**

- .1 The Manager is the City official responsible for the administration of the Contract. He has delegated contract administration authority in the manner and to the person(s) occupying the position(s) identified in the Contract, such as the Deputy Manager or the Project Manager.
- .2 The Deputy Manager reports to the Manager either directly or through another position, and has supervisory responsibility over the Project Manager, either directly or through another position. These General Conditions specify that certain actions or decisions are the responsibility of the Deputy Manager. The Deputy Manager may delegate by Special Condition all or part of his authority to specific intermediate positions. The specific line of authority for each Project shall be identified by the Special Condition.

## **213 CITY'S COMMUNICATIONS WITH THE CONTRACTOR**

The Project Manager will transmit, directly or through others, written instructions, responses or other communications to the Contractor's Superintendent or other persons identified in writing by the Contractor to receive such communications. The Contractor shall, by a letter to the Project Manager, designate (by name) one or more assistant Superintendents to receive oral and written field communications when the Superintendent is away from the Work site and to act as the Superintendent's designated representative. During the times that the Superintendent may be temporarily absent, an assistant Superintendent shall be authorized to act immediately on orders or instructions issued by the Project Manager. If the City finds it necessary to communicate at the Work site with Contractor Personnel authorized to receive such communications and none are available to receive such communications, the City may suspend all of the Contractor's operations at that Work site until such communications can be accomplished.

## **TITLE 3 - CONTRACTOR PERFORMANCE AND SERVICES**

### **301 CONSIDERATION (CONTRACTOR'S PROMISE OF PERFORMANCE)**

- .1 The Contractor promises to perform the Work or cause the Work to be performed in a manner that is in compliance with the requirements of the Contract Documents.
- .2 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, temporary construction easements, permits and other facilities and services, necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.
- .3 The Contractor shall supervise and direct the Work using the Contractor's best efforts, skill and attention. The Contractor shall also supervise, direct and be responsible for all work performed by its Subcontractors, their agents and employees and other persons performing any of the Work under a contract with the Contractor, Subcontractors of any tier or Suppliers of any tier. The Contractor shall be solely responsible for all construction means, methods, safety, techniques, sequences and procedures unless otherwise specified in the Contract Documents.

### **302 NOTICE TO PROCEED AND COMPLETION OF THE WORK**

- .1 A written Notice to Proceed with the Work will be issued by the Deputy Manager, and the Contractor shall start the Work within ten (10) Days of the date of that Notice to Proceed. Thereafter, the Contractor shall be responsible for achieving Final Completion of the Work in accordance with the Contract Documents.
- .2 If any milestones are described in the Contract Documents, the Work described by each milestone shall be accomplished in accordance with the Contract Documents.
- .3 The Contractor shall complete the Work within the specified Contract Time.

### **303 EXACT CONTRACTOR PERFORMANCE**

The Contractor shall perform the Work exactly as specified by the Contract Documents.

### **304 SUBSTITUTED PERFORMANCE**

If the Contractor's failure of exact performance does not appear to the City to be deliberate or willful and if the City concludes that less than exact performance in some minor part of the Work will not result in a decrease in quality in the entire Work, the City may, at its sole option, accept substituted performance. Should the City accept substituted performance, the cost of the Work shall be reduced by the sum of money that the City determines to be a reasonable consideration for less than exact performance and the City may, at its discretion, require separate warranties for any substituted performance.

### **305 WORK PERFORMED UNDER ADVERSE WEATHER CONDITIONS**

- .1 Adverse weather conditions are those that are not abnormal weather conditions but that can, depending on the Work to be performed, cause defective Work. High or low temperatures, excessive moisture, or unusual drying conditions are examples. Abnormal weather conditions are discussed in GC 1105.3.
- .2 Construction methods and practices that have been or may be developed for Work performed under such circumstances may only be used after the Deputy Manager has approved the concept of such method or practice.
- .3 If the Contractor does attempt Work during periods of adverse weather conditions, that Work shall be at the Contractor's sole risk even if the plan of action or method employed is approved in concept by the Deputy Manager.

### **306 WORKING HOURS AND SCHEDULE**

- .1 For Contracts executed under the authority of the Manager of Public Works:
  - A. Work shall normally not be done on Saturdays, Sundays, City observed holidays, or outside of the daytime working hours that may be specified in the Special Conditions, except for such work as may be necessary for proper care, maintenance, and protection of Work already done, or in cases when the Work would be endangered or when hazard to life or property would result. The Contractor shall comply with the City's noise control ordinance during all working hours.
  - B. If the Contractor believes it may be necessary to work on Saturdays, Sundays, holidays, or at night, the Contractor shall make prior arrangements with the Project Manager and receive written approval at least twenty-four (24) hours before such work period so that proper inspection and engineering services can be provided. Such approval may be revoked by the Project Manager if the Contractor fails to maintain adequate equipment and lighting at night for the proper prosecution, control and inspection of the Work. If Work is done outside of approved working hours, and the Project Manager has not assigned inspectors to the Work, the Work performed during those periods of time may be declared defective solely on the grounds that it was not properly inspected.
- .2 For Contracts executed under the authority of either the Manager of Public Works or the Manager of Aviation:
  - A. The Contractor shall schedule and coordinate the performance of all of its Subcontractors and Suppliers, including their use of the Work site. The Contractor shall keep the Subcontractors and Suppliers informed of the Project construction schedule to enable the Subcontractors and Suppliers to plan and perform their work properly.
  - B. Within ten (10) Days of the issuance of Notice to Proceed, or as otherwise set forth in the technical specifications, the Contractor shall submit a construction schedule which shall provide for the expeditious and practicable execution of the Work. Such construction schedule shall be in a Critical Path Method (CPM)

format or such other format approved by the Project Manager. A Critical Path Method schedule shall be required in any event for any Contractor Change Request pursuant to GC 1103.4 and any resulting claim. The receipt of the schedule by the Project Manager shall in no way constitute acceptance of the Contractor's anticipated schedule of construction activities. The schedule will be reviewed for comment by the Project Manager. Any Contract completion date set forth in the Contractor's schedule shall in no way change the Contract Time. The Project Manager's review and comment on the schedule shall not constitute approval or acceptance thereof by the City.

- C. The Critical Path Method schedule shall provide reasonable detail as described in the Technical Specifications and shall include a time scaled network and computer printout. Additionally, float or slack is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activities in the schedule. Float or slack is not time for the exclusive use or benefit of either the Contractor or the City.
- D. The Contractor shall, once a month, submit a progress report and an updated schedule in a form acceptable to the Project Manager.

### **307 CONTRACTOR'S SUPERINTENDENT**

The Contractor shall employ and designate to the Deputy Manager in writing a competent Superintendent whose qualifications shall be acceptable to the Deputy Manager. The Superintendent shall serve on a full-time basis at the Work site and shall be authorized to act on behalf of the Contractor in all matters related to the Work. The same person shall continue in the capacity of Superintendent until the Work has been completed, unless the Deputy Manager requests that the Superintendent be replaced, the Superintendent ceases to be employed by the Contractor or the Superintendent becomes sick or disabled. The Superintendent or his designated representative must be on site at all times when on-site Work is performed.

### **308 COMMUNICATIONS**

An orderly system for communication between the City and the Contractor is essential to the satisfactory completion of the Work. Communications between the Contractor and the City shall be in accordance with the provisions of the Contract Documents.

### **309 CONTRACTOR SUBMITTALS AND OTHER WRITTEN COMMUNICATIONS TO THE CITY**

- .1 The Contractor shall submit to the City all documents required by the Contract Documents.
- .2 Formal communications from the Contractor to the City that are necessary for the performance of the Contract, including documents described in the Contract Documents, and any other written communications, will be addressed to the Project Manager unless otherwise specified in the Contract Documents. Only when the Contractor finds it necessary to request review of a decision of the Project Manager shall the Contractor address correspondence directly to the Deputy Manager. All written communications or submittals shall be signed by the Contractor's Superintendent. Additional requirements regarding submittals are set forth in the Technical Specifications.



- .3 The City expects and the Contractor agrees that the Superintendent is in full charge of all Contractor activity on the Project unless the Contractor has designated in writing other persons authorized to send and receive formal communications, and the specific authority of such designated persons.
- .4 The Contractor shall prepare and keep current a schedule of submittals which shall note all required submittals, submittal dates, required approval dates and all required delivery dates.

### **310 COMPETENCE OF CONTRACTOR'S WORK FORCE**

Competent personnel with experience and skills adequate for the assigned tasks are an absolute necessity for job safety and for the performance of quality work. The Contractor shall reassign or remove from the Project all Contractor Personnel who are requested to be reassigned or removed by the Project Manager or who are incompetent, uncooperative, refuse to comply with safety requirements, are unable to obtain required badges or clearances for contracts of the Aviation Department or of other City agencies or have such badges or clearances revoked, or are otherwise unfit to perform the assigned task.

### **311 NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE CONTRACT**

- .1 This Contract is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").
- .2 The Contractor certifies that:
  - A. At the time of its execution of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract.
  - B. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.
- .3 The Contractor also agrees and represents that:
  - A. It shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - B. It shall not enter into a contract with a subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - C. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract, through participation in the E-Verify Program.
  - D. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Contract, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

- E. If it obtains actual knowledge that a subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
  - F. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. § 20-90.3.
- .4 The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Contract for a breach of the Contract. If the Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

**312 CONDUCT OF CONTRACTOR'S PERSONNEL**

- .1 All Contractor Personnel must conduct themselves in an orderly and disciplined manner while engaged in the performance of the Project both on and off of the Work site. The City expects and will demand that the Contractor enforce acceptable and appropriate conduct by all Contractor Personnel to enhance job and public safety and to present to the public the best possible image of City construction activities.
- .2 Should any Contractor Personnel behave in a disorderly manner or be abusive to others by language or actions while engaged in the performance of the Project either on or off the Work site, and if the Contractor fails to properly discipline the offender and provide satisfactory assurance that such behavior will not recur, the City is authorized to demand that the Contractor no longer assign the offender to any City work. Upon such written demand, the Contractor shall promptly remove that individual from the Project.

**313 SUGGESTIONS TO CONTRACTOR**

Any plan of action, method of work, or construction procedure suggested orally or in writing to the Contractor by any City employee, agent or representative or by the Designer, which is not set out in Change Orders or other written directives issued in accordance with the Contract Documents, if adopted or followed by the Contractor in whole or in part, shall be performed at the sole risk and responsibility of the Contractor.

**314 WORK FORCE**

- .1 The Contractor shall assign an adequate number of qualified, competent workers to each task to complete the Work on schedule and in accordance with the Contract Documents.
- .2 If the City believes that the Work is not proceeding satisfactorily or may not be satisfactorily completed in the allotted time because the Contractor has not employed an

adequate number of qualified, competent workers, at no additional cost to the City, the Project Manager may, by letter to the Contractor, pursuant to this General Condition and GC 704, require the Contractor to employ additional qualified, competent workers, at no additional cost to the City, to raise the rate of progress to an acceptable level.

### **315 CONSTRUCTION MACHINES AND STANDBY EQUIPMENT**

The Contractor shall have available for use when needed all necessary construction machinery and equipment. Such machinery and equipment shall comply with all applicable federal, state and local safety requirements and be in good working condition, adequate for the task, and in the numbers needed to maintain a rate of progress sufficient to complete the Work within the Contract Time and milestones. Whenever an operation is undertaken which must be accomplished without any slowdown or stoppage, or to avoid an inferior product, the Contractor shall provide standby equipment capability so that an equipment breakdown does not disrupt that activity.

### **316 CUTTING AND PATCHING THE WORK**

- .1 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work, to make its several parts fit together properly or to tie the Work into other work that is shown in the Contract Documents.
- .2 The Contractor shall organize and plan the Work to reduce to a minimum the need for cutting or otherwise modifying or removing load bearing structural elements to accommodate the installation of other elements of the Work. If two or more contractors are doing work in the same place, the Contractor shall be responsible for the coordination effort needed to avoid or to reduce the amount of cutting, modifying or removing of structural elements to accomplish such work. However, if modification or removal of structural elements is required because the Work could not be organized and planned to avoid that need, the Contractor shall inform the Project Manager of the need so that the consequences of such modification or removal of structural elements can be assessed. No structural element shall be cut, drilled, bored or otherwise modified unless cutting, drilling, boring or other modification is indicated in the Contract Documents.
- .3 If the Contractor needs to modify a structural element from its original design, the Contractor must submit to the Project Manager a request to make the modification. The request must provide complete details including all necessary calculations performed by a Professional Engineer licensed in the State of Colorado to show that the structural elements can still function as originally designed. The request must be accepted by the Project Manager before any modification is made.
- .4 The Contractor shall be responsible for all repair, replacement, and patching that is necessary to restore the Work, other property, or work of others damaged by the Contractor.

### **317 PERMITS AND LICENSES**

- .1 The Contractor is required to possess the appropriate contractor licenses issued by the Department of Public Works pertaining to the Work to be performed.

- .2 The Contractor and its Subcontractors and Suppliers shall obtain and pay for, in a timely manner, all required business licenses, permits and certificates.
- .3 The Contractor shall obtain and pay for all licenses, permits or approvals required in the prosecution of the Work, including but not limited to all permits, licenses or approvals to tap water and sewer lines, to occupy or operate within the public right of way, or to comply with Zoning requirements. The Contractor shall also be responsible for the payment of any applicable taxes, tap fees, sewer fees, inspection fees, development fees, Zoning fees, or other charges and fees imposed by any utility company or governmental agency.
- .4 If Contractor equipment, trailers or materials are to be stored on or near a construction site, the Contractor must obtain, at its sole expense, a temporary permit from the City's Zoning Office, if applicable, and shall comply with applicable fencing requirements for such storage. However, if such storage location is within land constituting the City's Municipal Airport System, the Contractor shall obtain approval from the Project Manager for such storage, instead of from the Zoning Office.
- .5 The Contractor is required to understand and comply with the ordinances and rules and regulations administered by the Building Inspection Division, including the requirements for permits for public buildings, excavations, retaining walls, and fences, in connection with its performance of the Work. The Contractor is responsible to pay all such building permit fees in a timely manner.

### **318 CONSTRUCTION SURVEYS**

- .1 Unless otherwise stated in the Technical Specifications or the Special Conditions, the City will provide all reference points shown on the Contract Drawings by coordinates and/or elevation. The Contractor must accurately transfer the survey control information to the points of application to ensure that all elements of the Work are correctly located.
- .2 Requests by the Contractor to relocate survey reference points must be made ninety-six (96) hours prior to the time when the point will be disturbed in order to permit the City to accomplish such surveys on normal working days.
- .3 Any Work that the Contractor begins before confirming the reference points provided may be rejected. Should the original reference points that the City provided be obliterated or dislodged by operations that the Contractor controls, the City will replace them and charge the Contractor for the resurvey. The cost of these resurveys will be determined by multiplying the hourly equivalent of the salaries and fringe benefits paid to the survey personnel actually involved in the resurvey by the hours expended in doing that resurvey, plus material and equipment costs.

### **319 PRESERVATION OF PERMANENT LAND SURVEY CONTROL MARKERS**

Throughout the City there exists an extensive system of benchmarks and monuments installed for the purpose of maintaining a land survey control grid. Prior to the commencement of work on the Project, each existing survey monument and benchmark shall be tied out so that it can be reestablished after completion of the Work should it be damaged. Ties shall be maintained during construction. Survey monuments and benchmarks that existed prior to construction, but

that were damaged or destroyed during construction, shall be reset or rehabilitated in accordance with State requirements at no cost to the City.

### **320 TRADEMARKS, COPYRIGHTS AND PATENTED DEVICES, MATERIALS, AND PROCESSES**

- .1 The Contractor's bid price shall be considered to include a sufficient sum to cover all fees, royalties and claims for any material, artist rights, process, patent rights, machine, appliance, copyright, trademark, or any arrangement that may be used upon or in any manner connected with or appurtenant to the Work.
- .2 If the Contract Documents require, or the Contractor desires to use, any design, device, material, or process covered by letters, patents, copyrights, trademarks, or artist rights, it shall provide for such use by suitable written agreement with the patentee or patent owner, copyright owner, trademark owner, or artist, which agreement shall provide that there will be no future or continuing royalties or payments or obligations by the Contractor or by the City.
- .3 The Contractor and the surety shall, at all times, defend, save harmless, and indemnify the City, its Officers, agents, and employees from and against all fees, royalties, demands, claims, or suits by reason of any infringement or alleged infringement of such patent rights, copyrights, trademark rights, intellectual property rights or artist's rights; provided, however, the Contractor need not indemnify against the negligence of the City, its officers or employees. This obligation shall survive the termination of the Contract.

### **321 PROJECT SIGNS**

- .1 Under no circumstances except for safety will the Contractor be permitted to post any signs other than those required by the Contract Documents without the written approval of the Project Manager.
- .2 The following requirements apply only to contracts of the Department of Public Works, and not to those of the Department of Aviation:
  - A. Two standard project signs shall be posted at each Work site. The City will prepare these signs at its expense. When the City notifies the Contractor that the signs are ready, the Contractor shall deliver the signs to the Work site and install them in locations designated by the Project Manager. As the Work progresses, the Project Manager may direct the Contractor to relocate the signs. The Project Manager will direct the Contractor as to final removal of the signs, either upon completion of the Work or at such other time as the Project Manager may determine.
  - B. All costs of transporting, installing, relocating and removing such signs shall be borne by the Contractor. The Contractor shall pay the costs of repairing any damage to the signs which occurs after the Contractor takes possession of the signs.
  - C. Unless the Special Conditions require additional signs, only the two project signs described in this GC will be used.

## **322 PUBLICITY AND ADVERTISING**

- .1 Neither the Contractor nor its Subcontractors or Suppliers shall include any reference to the Contract or to Work performed hereunder in any advertising or public relations materials without first obtaining the written approval of the Deputy Manager. All information so included shall be factual, and shall in no way imply that the City endorses the Contractor or its services or product.
- .2 The City shall have the right to photograph, videotape, film or in any other manner record the progress of the Work at any time and to use such materials for any purpose.

## **323 TAXES**

- .1 All tangible personal property used in the construction of the Work or incorporated into the Work will be subject to all local government and State of Colorado sales or use taxes, and neither the Contractor nor its Subcontractors or Suppliers shall be exempt from paying sales or use taxes, except as provided by law.
- .2 Construction and building materials sold to contractors and subcontractors for use on airports, aeronautical facilities, buildings, structures, roads, streets, highways, and other public works owned by the City are exempt from State of Colorado, Scientific And Cultural Facilities District, and Regional Transportation District sales or use taxes. However, such materials are subject to sales or use taxes imposed by the City and, if applicable, other taxing authorities. Such City sales or use taxes shall in no instance be part of any compromise or settlement of any claims on the Project or any lawsuit related to the Project without the written consent of the City's Manager of Finance.
- .3 The purchase cost or value of construction tools or equipment used on the Work site is subject to sales and use tax payable to the State of Colorado and the City. Credit is given for state and city sales and use taxes paid to other jurisdictions.
- .4 The Contractor and any Subcontractor who manufactures tangible personal property that is used or consumed by the manufacturer/Contractor, including the installation into or the affixing to real property of another of the tangible personal property, for which there exists also a retail market, is subject to the City's sales or use tax, but the tax due in such case shall be due on the gross value of all the materials, labor and services used and employed in the manufacture of said property.
- .5 In order to obtain the State of Colorado, RTD and other taxing authority exemptions, the Contractor and Subcontractors or Suppliers must apply to the Colorado Department of Revenue for a certificate, or certificates, of exemption indicating that their purchase of construction or building materials is for a public project. Complete copies of Applications for Exemption Certificates with the approval of the Colorado Department of Revenue or successor agency noted thereon should be delivered to the City if possible prior to the issuance of the Notice to Proceed and if not, as soon as possible thereafter. The Contractor will furnish the Project Manager with copies of the approved applications of all of its Subcontractors.
- .6 Any employee working for the Contractor or any Subcontractor or Supplier who earns over Five Hundred Dollars (\$500.00) working in the City and County of Denver during a calendar month, is subject to the payment of the Employee Occupational Privilege Tax.

The Contractor and each Subcontractor or Supplier must withhold the Employee Occupational Privilege Tax from the wages of each employee who is subject to it, remit the tax to the City, and pay to the City the correlative Business Occupational Privilege Tax imposed on the employer for such employee.

- .7 The Contractor must remit payment on any and all personal property taxes assessed under CRS §39-1-101, et seq, and §39-5-101, et seq., when due.
- .8 The foregoing contractual terms are intended to accurately reflect existing applicable law; however, if any of the foregoing provisions conflict with the laws, determinations or regulations of the City, the latter shall control.
- .9 Final payment will not be made until the foregoing contractual obligations are met and all tax payments are made current.

### **324 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain and keep current at the Work site, one record copy of all drawings, specifications, permits, addenda and Change Orders in good order to record all changes made during construction. The Contractor shall also maintain and keep current copies of all approved Shop Drawings, Product Data, and Samples.

### **325 CLEANUP DURING CONSTRUCTION**

- .1 The Contractor shall keep the Work site and the surrounding premises free of accumulated waste materials at all times. If space is available, the Project Manager may designate a place on the premises to collect all debris and rejected materials. If such space is designated, the Contractor shall, at his expense, install fencing and whatever else is needed to keep loose materials confined so that they are not scattered by the winds. The Contractor shall remove the waste material to a suitable licensed landfill at least weekly or more often, whenever the waste material creates a safety or health hazard or interferes with any Contractor's, Subcontractor's or Supplier's work.
- .2 Accumulations of mud or debris that are tracked onto areas adjacent to the Work site, or onto streets, airfield pavements, City property or public rights-of-way even if not adjacent to the Work site, by construction equipment of the Contractor or any Subcontractor or Supplier, must be removed promptly and not allowed to create a hazard or an unsightly condition.
- .3 Equipment and tools needed for the Work must be kept out of traveled ways such as streets, alleys, parking areas, sidewalks and airfield pavement areas. Equipment that may endanger vehicular or pedestrian traffic must be suitably lighted and marked to prevent motorists and pedestrians from colliding with that equipment.
- .4 The Contractor's obligations to maintain a clean, safe and orderly Work site include responsibility for pest control and vector control. All pest and vector control activities shall be conducted in compliance with applicable laws, including ordinances, statutes and regulations governing the handling, storage and application of pesticides or other hazardous materials and substances.
- .5 If, in the sole opinion of the Project Manager, the Contractor fails to maintain the Work site in a clean, orderly, and safe condition, progress payments may be withheld or the

City may have others perform the clean up work and deduct the cost thereof from such progress payments. If more than one Contractor was working in the uncleaned area, a proportionate part of the cost will be deducted from progress payments to all such contractors in the area based upon a breakdown determined by the Project Manager and Deputy Manager.

### **326 SANITARY FACILITIES**

The Contractor shall provide and maintain in a neat and sanitary condition at a location approved by the Project Manager that is properly screened from public view, such sanitary facilities as are needed to comply with the requirements and regulations of any agency having jurisdiction, for the use of all persons engaged on the Work. Upon the completion of the Work, the Contractor shall promptly remove such facilities.

### **327 POWER, LIGHTING, HEATING, VENTILATING, AIR CONDITIONING AND WATER SERVICES**

- .1 The Contractor shall pay for all energy and water needed to do the Work and provide and pay for all temporary facilities needed to deliver that energy and water to the Work. These temporary facilities shall be installed and maintained in such a manner as to protect the public and workers and conform with any applicable laws, rules and regulations. Upon completion of the Work, the Contractor shall promptly remove all such temporary facilities.
- .2 The Contractor shall also provide and maintain lighting at the Work site adequate for the protection of the public and the workers, all in conformance with any applicable laws and local regulations.
- .3 If temporary heating, ventilating or air conditioning is required before the permanent heating, ventilating or air conditioning system is available, the Contractor shall provide at its own expense, not to be reimbursed by the City, HVAC apparatus acceptable to the Project Manager and shall provide all required fuel.
- .4 When the heating, ventilating or air conditioning system in any new construction is ready for operation, the Contractor may set it into operation and remove the temporary HVAC equipment. Operation of the heating, ventilating or air conditioning system prior to Substantial Completion of the Work is at the Contractor's risk and expense, and shall not affect the extent or period of Contractor's or manufacturer's warranties or guarantees on any such equipment or system.



## **TITLE 4 - CONTRACT DOCUMENTS (DRAWINGS AND SPECIFICATIONS)**

### **401 CONTRACT DOCUMENTS - REVIEW AND INTERPRETATION**

- .1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The individual documents comprising the Contract Documents are all essential parts of the Contract and a requirement occurring in one is binding as though occurring in all; they are complementary and indicate the construction and completion of the Work. All Contract Documents must be read together. Anything mentioned in the Technical Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both.
- .2 Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and any amendments or supplements thereto in effect on the date the bid is received except where a particular issue or edition of a publication is indicated. In case of a conflict between the Technical Specifications and the referenced standard, the more stringent shall govern, as determined by the Project Manager.
- .3 Conflict or inconsistencies among the Contract Documents shall be resolved as follows:
  - A. Special Conditions shall be given precedence over General Conditions.
  - B. General Conditions shall be given precedence over Technical Specifications except that if, and to the extent that, the Technical Specifications provide for a higher standard or more stringent requirements than the General Conditions, the Technical Specifications shall be given precedence in such respects.
  - C. Technical Specifications shall be given precedence over Contract Drawings.
  - D. Larger scale drawings shall be given precedence over smaller scale drawings, for example: 1" = 1' is larger scale than 1" = 40' and 1" = 1' is larger scale than 1/8" = 1'.
  - E. Where appearing on drawings, computed dimensions shall govern over scaled dimensions.
  - F. In the event of conflict or inconsistency between provisions of the Technical Specifications, the more stringent shall be given precedence over the less stringent.
- .4 The Contractor shall carefully study the Contract Documents and shall immediately report in writing to the Project Manager any error, conflict, inconsistency, or omission that may be discovered and shall obtain specific written instructions from the Project Manager before proceeding with the Work.
- .5 The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved drawings, specifications, instructions, Shop Drawings, Product Data, or Samples for such portion of the Work.

- .6 If labor, materials or equipment, although not described by the Contract Drawings or Technical Specifications, is required to successfully complete the Work and can reasonably be inferred by competent contractors by virtue of common knowledge or customary practice in the construction industry from the Contract Documents as being necessary to produce the intended result, the Contractor shall perform that work or provide the materials or equipment as if they were specified.
- .7 If the Contractor or any of its Subcontractors or Suppliers, knows or reasonably should know by virtue of common knowledge or customary practice in the construction industry that any of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, or rules or regulations, in any respect, the Contractor shall promptly notify the Project Manager in writing, and any necessary changes shall be accomplished by issuance of an appropriate Change Order or field directive. If the Contractor or any of its Subcontractors, perform any work when they know or reasonably should know that it is contrary to such laws, statutes, ordinances, building codes, rules or regulations, the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto.
- .8 The Contractor, before commencing work, shall verify all governing dimensions, and shall examine, to the extent reasonable, all adjoining work on which its Work is in any way dependent. No disclaimer of responsibility for defective or non-conforming adjoining work will be considered unless written notice of the same has been filed by the Contractor and agreed to in writing by the Project Manager before the Contractor begins any part of the affected Work.
- .9 The various headings contained in the Contract Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Contract Documents or any provision thereof.

#### **402 OWNERSHIP OF CONTRACT DRAWINGS AND TECHNICAL SPECIFICATIONS**

All Contract Drawings and Technical Specifications are the property of the City and shall not be used by the Contractor for any purpose other than the Work to be performed under the Contract. Upon completion of the Work, all Shop Drawings and as-built drawings, including all material in electronic format shall become the property of the City. The Contractor will be permitted to maintain a copy of the Contract Drawings, Technical Specifications and Shop Drawings as necessary to maintain a Contract record file.

#### **403 CONTRACT DRAWINGS AND TECHNICAL SPECIFICATIONS ISSUED TO THE CONTRACTOR**

- .1 The City will provide at no charge an electronic file containing the plans and specifications from which the Contractor can make additional copies at its own expense.
- .2 Contractor must maintain a set of Contract Drawings and Technical Specifications in good condition at the Work site for the purpose of recording "as-built" conditions in order to develop a record of the construction of the Work. On this set, the Contractor shall daily record all changes and deviations in a neat and legible manner. Any deviation between Contract Drawings and Technical Specifications and the Work actually done, no matter how insignificant, must be recorded. Of special concern is that all underground utility

structures encountered in performing the Work be correctly located on such Drawings by means of physical ties or dimensions to permanent monuments or structures. When the Work is completed, the Contractor shall deliver this single set of Contract Drawings and Technical Specifications to the Project Manager. These Drawings must be submitted to and approved by the Project Manager before final payment can be made.

- .3 The Contract Documents provided to the Contractor must be provided in identical form, by the Contractor, to its Subcontractors and Suppliers.

#### **404 REQUESTS FOR INFORMATION OR CLARIFICATION**

- .1 The Contractor shall submit any requests for information or clarification of Contract Drawings and Technical Specifications to the Project Manager or to the person who has been designated by the Project Manager to receive such requests. When the City responds to such requests for information or clarification, it will issue a response which can consist of a written explanation with or without drawings or other information in the City's sole discretion. Such requests and responses to such requests shall neither authorize nor constitute time extensions or changes in the Contract Amount. Should the Contractor believe that the response to any request for information or clarification requires a change in Contract Time or Contract Amount, it shall submit a Contractor Change Request to the Project Manager in accordance with GC 1103.
- .2 The Contractor shall review and attempt to answer requests for information or clarification from its Subcontractors and Suppliers. Such requests shall be encompassed within the Contractor's request for information or clarification by the Contractor to the Project Manager if the Contractor is unable to answer such requests.

#### **405 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- .1 The Contractor shall submit all Shop Drawings, Product Data and Samples, as defined in these General Conditions, to the Project Manager or the Designer in accordance with the requirements in the Technical Specifications, or as otherwise directed in writing by the Project Manager. Shop Drawings and Product Data will be returned to the Contractor with a written transmittal in accordance with the Technical Specifications.
- .2 The Contractor shall prepare, review, certify, endorse and submit, to the Project Manager or the Designer, with reasonable promptness, and in such sequence as to cause no delay in the Work, all Shop Drawings, Product Data and Samples required by the Contract Documents. The Contractor shall submit a submittal schedule for Shop Drawings, Product Data and Samples as required by the Special Conditions or Technical Specifications, or as otherwise directed in writing by the Project Manager. All such drawings and other material shall contain identifying nomenclature and each submittal shall be accompanied by a transmittal identifying in detail all enclosures. Facsimile reproductions of Contract drawings shall not be used, in whole or in part, for the direct submittal of Shop Drawings unless specifically approved by the Project Manager.
- .3 By preparing, certifying, and submitting Shop Drawings, Product Data, and Samples, the Contractor represents that the Contractor has determined and verified all 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, the Project, the Contract Documents and previously reviewed and accepted submittals.

- .4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the acceptance of Shop Drawings, Product Data or Samples unless the Contractor has specifically disclosed such deviation, in writing, at the time of submission and obtained written acceptance of the specific deviation by the Project Manager or Designer. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, or Samples by the City's review and acceptance of them. Review and acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.
- .5 All resubmittals shall either on their face, or in the accompanying transmittal, clearly indicate all revisions which have been made since the previous submittal, whether or not such revisions were requested by the City.
- .6 The Designer may review the Contractor's submittal such as Shop Drawings, Product Data, Samples, certificates and test results for conformance with the Contract Documents. Review by the Designer or Project Manager shall not relieve the Contractor of its responsibilities under the Contract Documents. All such portions of the Work shall be in accordance with the accepted submittal. No portion of the Work requiring submission of Shop Drawings, Product Data, or Samples shall be commenced until the submittal has been accepted. Such acceptance shall not relieve the Contractor of its responsibilities under the Contract Documents.
- .7 If required by the Project Manager, the Contractor will submit Shop Drawings, Product Data, Samples, certificates and test results electronically on a system specified by the Project Manager at no cost to the City.

#### **406 SUBSTITUTION OF MATERIALS AND EQUIPMENT**

- .1 After the award of the Contract, the Contractor may ask for substitution of specified material or equipment with equal or equivalent items only under the following circumstances: (i) The Contractor provides evidence to the Project Manager that, in the Project Manager's sole opinion, establishes that an item of specified material is not available; (ii) the Contractor provides evidence to the Project Manager that, in the Project Manager's sole opinion, establishes that the specified item will have an unreasonable delivery time due to no fault of the Contractor; or (iii) acceptance of such substitution would result in a significant saving to the City without materially impairing the quality or performance of the Work. If any of these circumstances exist, the Contractor shall request approval for a substitution at least thirty (30) Days before the material or equipment must be ordered.
- .2 All requests for substitutions shall be made in writing as part of a submittal. The request shall describe all features of the requested substitution including any tie-in with other elements of the Work, including utilities and controls along with the size and capacity of substitute materials or equipment. The request must be submitted on a form provided by or otherwise acceptable to the Project Manager, and shall list all differences from the product described in the Technical Specifications, include the price of the specified item

and the requested substitution, and describe any advantages or disadvantages of the proposed substitution. The Contractor shall be responsible for any effect upon related Work in the Project of any substitution and shall pay any additional cost resulting from or relating to any substitution.

- .3 If the "equal or equivalent" material or equipment costs less than that specified, the Contractor shall so state in its request for substitution and if the City accepts the proposed substitution it may issue a Change Order to reduce the Contract Amount by the amount of the direct cost savings without markup to the Contractor.
- .4 If the "equal or equivalent" material or equipment is accepted for the reasons described in GC 406.1 (i) or (ii), the City may, if appropriate, issue a Change Order to increase the Contract Amount by the resulting actual, direct cost increase, if any, to the Contractor, without markup.

## **TITLE 5 - SUBCONTRACTS**

### **501 SUBCONTRACTS**

- .1 The Contractor may subcontract portions of the Work within the percentage limits authorized in the Special Conditions, and each subordinate level of Subcontractor may subcontract portions of the Work which have been subcontracted to it. However, all subcontracting must be done in strict observance of this Title 5, and the Contractor shall not structure its subcontracting so as to intentionally avoid the obligations of this Title 5.
- .2 The Contractor is prohibited from hiring any subcontractor currently debarred by the City under section 20-77 of the Denver Revised Municipal Code.
- .3 The Contractor shall be responsible for any acts or omissions of its Subcontractors, Suppliers and Contractor Personnel. In addition, all work performed for the Contractor by a Subcontractor or Supplier shall be pursuant to an agreement between the Contractor and the Subcontractor or Supplier which shall contain provisions that:
  - A. Require the Subcontractor or Supplier to be bound to the Contractor by the terms of the Contract Documents;
  - B. Require all subcontracted work to be performed in accordance with the requirements of the Contract Documents, and, that with respect to the work the Subcontractor or Supplier performs, that the Subcontractor or Supplier assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the City;
  - C. Preserve and protect the rights of the City and its funding agencies under the Contract Documents with respect to the Work to be performed so that the subcontracting thereof will not prejudice those rights;
  - D. Require each of its Subcontractors or Suppliers to include in their contracts with lower tier Subcontractors or Suppliers these same requirements; and
  - E. Require each Subcontractor or Supplier to make copies of the Contract Documents available to the Subcontractor's or Supplier's Subcontractors or Suppliers.
- .4 The Contractor shall make available to each proposed Subcontractor or Supplier, prior to the execution of the subcontract, copies of the Contract Documents.

### **502 SUBCONTRACTOR ACCEPTANCE**

- .1 Except as provided in the City's Small Business Enterprise (SBE), Minority and Woman Business Enterprise (M/WBE) and Disadvantaged Business Enterprise (DBE) contracting requirements, the City recognizes that prior to bidding, the bidder may not have been able to negotiate for all portions of the Work which the bidder proposes to subcontract. The City will, therefore, permit the successful bidder to propose additional Subcontractor(s) at any time during the Contract period provided, however, that any limitation on subcontracting has not been exceeded, and that all such SBE/MBE/WBE/DBE

requirements are adhered to. If the proposed Subcontractor(s) are acceptable and the City, by letter to the Contractor, approves of the Subcontractor(s), the Contractor may enter into agreements with these parties. If any proposed Subcontractor(s) are not acceptable to the City, the Contractor must submit for City approval the names of substitute Subcontractors.

- .2 Each Subcontractor that the Contractor expects to perform Work must be accepted in writing by the Manager before the Subcontractor begins work. The acceptance or rejection of any proposed Subcontractor shall be at the Manager's sole discretion. The reasons the Manager may use for not accepting a Subcontractor include, but are not limited to, the following:
  - A. Default on a contract within the last five (5) years.
  - B. Default on a contract that required that a surety complete the contract under payment or performance bonds issued by the surety.
  - C. Debarment within the last five (5) years by a public entity or any organization that has formal debarment proceedings.
  - D. Significant or repeated violations of Federal Safety Regulations (OSHA).
  - E. Failure to have the specific qualifications listed in the Contract Documents for the work that the Subcontractor will perform.
  - F. Failure to have the required City or Colorado licenses to perform the work described in the subcontract.
  - G. Failure to pay workers the proper wage and benefits or to pay suppliers or subcontractors with reasonable promptness within the last five (5) years.
  - H. Conviction, plea of nolo contendere, entry into a formal agreement admitting guilt or entry of a plea of guilty or otherwise admitting culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, anti-trust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Subcontractor's business, on the part of Subcontractor's principal owners, officers, or employees, within the last five (5) years.
  - I. Failure to pay taxes or fees to the City.
  - J. Evidence that the Subcontractor was selected by the Contractor through the process of bid shopping, dishonesty or buyout.
- .3 Within thirty (30) Days of receipt of the Notice to Apparent Low Bidder and before the Manager accepts any such Subcontractor, the Contractor shall submit a statement signed by an officer or principal of the Contractor certifying that the Contractor has investigated the qualifications and background of each proposed Subcontractor and certifying under oath that, to the best of his or her knowledge, none of the bases for rejection listed above exist. In lieu of this certification, the Contractor may identify, for each proposed Subcontractor, any of the issues listed above applicable to that Subcontractor and attach to that statement a list of all judicial and administrative proceedings in the last five (5) years in which any proposed Subcontractor is or was a party, the proceedings involving

any of the issues listed above or in which any proposed Subcontractor filed for bankruptcy.

- .4 This Title 5 does not create, and shall not be interpreted as creating, any contractual relationship or privity of contract between the City and any Subcontractor. The acceptance or rejection of a proposed Subcontractor shall not create in that Subcontractor a right to any subcontract nor shall said acceptance or rejection relieve the Contractor of its responsibilities for the work of any Subcontractor.



## **TITLE 6 - TIME OF COMMENCEMENT AND COMPLETION**

### **601 BEGINNING, PROGRESS AND TIME OF COMPLETION**

A written Notice to Proceed will be issued by the Deputy Manager and the Contractor shall start the Work within ten (10) Days of the date of the Notice to Proceed. Thereafter, the Contractor shall prosecute the Work at such place or places as the Contract Documents require or as the Project Manager directs and shall fully complete the Work in every detail within the time limits set forth in the Contract Documents. The above mentioned ten (10) Days is included in the Contract Time.

### **602 LIQUIDATED DAMAGES; ADMINISTRATIVE COSTS; ACTUAL DAMAGES**

- .1 Time is of the essence of the Contract. In the event the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or fails to meet any other time requirement or the time limit set forth in the Contract, after due allowance for any extension or extensions of time made in accordance with the provisions herein set forth, the Contractor shall be liable to the City for liquidated damages, and not as a penalty, in the amount stipulated therefore in the Contract Form or in the Special Conditions. Such liquidated damages shall be assessed for each and every Day that the Contractor shall be in default, as established by said time limit or limits. The City shall have the right to deduct said liquidated damages from any amount due or that may become due the Contractor, or to collect such liquidated damages from the Contractor or its surety.
- .2 Liquidated damages in the amount stipulated do not include any sums of money to reimburse the City for actual damages which may be incurred between Substantial Completion and Final Completion because of the Contractor's failure to achieve Final Completion within the Contract Time. For such delay in Final Completion, the Contractor shall reimburse the City, as a mitigation of City damages and not as a penalty, those administrative costs incurred by the City as a result of such failure. Representative hourly rates for such administrative costs are set out in the Special Conditions. The Project Manager shall calculate the City's administrative costs based on such Special Conditions, as the same may be revised from time to time.
- .3 Liquidated damages in the amounts stipulated do not include any sums of money to reimburse the City for extra costs which the City may become obligated to pay on other contracts which were delayed or extended because of the Contractor's failure to complete the Work within the Contract Time. Should the City incur additional costs because of delays or extensions to other contracts resulting from the Contractor's failure of timely performance, the City will assess these extra costs against the Contractor, and these assessments will be in addition to the stipulated liquidated damages.
- .4 The City reserves all of its rights to actual damages from the Contractor for injury or loss suffered by the City from actions or omissions of the Contractor, including but not limited to any other breach or default of the Contract, outside of the scope of the above sections of GC 602.

## **603 DELAY DAMAGES**

- .1 The Contractor agrees that delays resulting from any causes other than acts or omissions of the City, its employees, agents or officials shall be considered fully compensated by a time extension, pursuant to GC 1105, and agrees to make no claim for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents.
- .2 If the Contractor's completion of the entire Contract is delayed due to actions within the control of the City, or due to the acts or omissions of persons authorized by the Manager to act on behalf of the City with regard to the Contract, and if such delay causes an increase in the Contractor's total cost of performance of the Work, and if the Contractor has given timely notice of such delay and provided adequate documentation of any changes in cost associated with such delay, then the Contractor shall be entitled to an equitable adjustment to the Contract. Such equitable adjustment shall consist of a fair and reasonable adjustment in the Contract Amount, an extension of the Contract Time, or both.
- .3 A delay in the completion of the entire Contract is a delay which is on the critical path of the Project and which cannot be re-sequenced so as to allow the Contractor to complete the Contract within the Contract Time.
- .4 If the Contractor believes that it has suffered delays in performing the Contract that are caused by acts or omissions of the City, the Contractor may submit a Contractor Change Request under GC 1103 and, if applicable, a claim under GC 1201. Failure of the Contractor to strictly comply with all requirements of GC 1103 (and, if applicable, GC 1201) shall constitute a waiver by the Contractor of any claim for additional compensation, extension of time, or damages resulting from such delays.

## **TITLE 7 - COOPERATION, COORDINATION AND RATE OF PROGRESS**

### **701 COOPERATION WITH OTHER WORK FORCES**

- .1 The Contractor must be prepared to accept the presence, on or adjacent to the construction site, of work forces of other contractors, subcontractors, tenants, government agencies and municipal, public service or utility systems. Should other work forces be required to engage in construction work on the site occupied by the Contractor, the Contractor's superintendent shall establish liaison with the supervisors of these other work forces and attempt to resolve conflicts arising out of such joint occupancy of the Work site. If it becomes impossible to proceed with the Work in a manner that permits all activities to progress at a reasonable pace, the Manager will select the course of action that appears to best serve the City. The Manager may stop or curtail the activities of any of the participants in the Work if it appears that such action is necessary. Should the decision of the Manager create a condition that prevents the Contractor from meeting the established schedule, the Contractor may request an adjustment to the Contract in accordance with Title 11.
- .2 The Contractor shall afford the City and other contractors reasonable and safe access to and across the Work site and reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work within or adjacent to the Work site, and shall connect and coordinate the Contractor's Work with their work as required by the Contract Documents. The City may also require that certain facilities and areas be used concurrently by the Contractor and other persons or entities.
- .3 If any part of the Contractor's Work depends for proper execution or results upon the work of the City or of any other contractor, or affects, or is affected by, the work of another contractor, the Contractor shall monitor and keep itself informed of the progress and details of such work of such other contractor or the City by attendance at job coordination meetings, observation of the Work site, and communication with other contractors. The Contractor shall promptly report in writing to the Project Manager any apparent discrepancies or defects in such other work that will or may render it unavailable or unsuitable for the Contractor to properly perform the Work. Failure by the Contractor to promptly report such discrepancies or defects shall constitute acceptance of the other work as fit, proper and ready for integration with the Contractor's Work, except for latent defects.
- .4 If the Contractor, through its acts or omissions, causes loss, damage or delay to the Work or other property, the Contractor shall, upon due notice, promptly use its best efforts to remedy such loss, damage or delay.
- .5 If the Contractor, through its acts or omissions, causes loss, damage or delay to the work or property of any other Contractors, Subcontractors, tenants, government agencies, and municipal, public service or utility systems, the Contractor shall, upon due notice, promptly use its best efforts to remedy such loss, damage or delay, or otherwise settle with such other person or entity by agreement or otherwise.

- .6 If the Contractor's Work is delayed by the acts or omissions of any other contractors, then a time extension may be granted pursuant to Title 11. No additional payment will be made to the Contractor by the City because of interference or delays caused by other contractors, where such delay is not caused by acts or omissions within the control of the City.

## **702 COORDINATION OF THE WORK**

The Contractor shall coordinate its Work and the work of all Contractor Personnel, Suppliers, materialmen, and Subcontractors. Such coordination shall include the preparation of appropriate coordination drawings as the City may require from time to time.

## **703 COORDINATION OF PUBLIC CONTACT**

- .1 The Contractor shall also coordinate and organize its Work so as to reasonably minimize the inconvenience to the general public, particularly occupants of property adjacent to the Project, resulting from the Work. Such coordination shall include meeting with or notification to the persons or citizens who will be affected by the Work, as appropriate, and shall be undertaken in cooperation with the Manager, and in accordance with any specific Contract provisions or direction from the Manager. The City expects and will demand that the Contractor enforce acceptable and appropriate conduct by all Contractor Personnel to enhance job and public safety and to present to the public the best possible image of City construction activities.
- .2 The Contractor shall obtain the approval of the Project Manager and notify all other affected persons or other contractors at least forty-eight (48) hours before starting work that may block access or otherwise cause undue difficulty to occupants or users of property affected, and shall restore such access to a usable condition or, with the Project Manager's permission, provide replacement access as soon as possible.
- .3 If the Contractor notifies the community, other contractors or the general public by written notice that utility shut offs, emergency road closures, or similar events will occur, a copy of such notices shall be provided to and approved by the Project Manager before such notices are sent.
- .4 The Contractor shall provide safe access to and through the Work site to accommodate City approved tours. When the City plans to conduct or authorize a site tour of the Project, the Project Manager will attempt to give the Contractor forty-eight (48) hours' advance notice and, if time is available, attempt to make necessary arrangements with the Contractor to facilitate the tour and mitigate disruptions to the Contractor's operations.
- .5 Without limiting the foregoing, any Contractor performing Work for the Aviation Department shall coordinate and organize its Work so as to avoid interference with the operational requirements of the City's Municipal Airport System.

## **704 RATE OF PROGRESS**

- .1 If the Project Manager believes that the Work or any portion thereof is not progressing at a satisfactory rate or will not be completed in the allotted time due to any acts or omissions of the Contractor, the Project Manager may require the Contractor to provide a written plan and to undertake appropriate action to raise the rate of progress to an

acceptable level or to complete the Work as required. The Contractor shall remain solely liable for the means and methods utilized in such plan. The Contractor shall submit and implement such plan within the time established by the Project Manager at no cost to the City. The Contractor shall revise its plan if it is not acceptable to the Project Manager.

- .2 If the Deputy Manager determines that the Contractor has failed to raise the rate of progress to an acceptable level, has not provided an acceptable plan to raise the rate of progress or complete the Work in the allotted time, or has failed to implement reasonable efforts to mitigate or eliminate any delays, the Deputy Manager may direct a course of action that best serves the interests of the City. The Manager may elect, at his sole discretion and in the City's best interest, to authorize or require the Contractor to accelerate or decelerate the rate of progress of the Work. Such authorization or requirement shall not be considered valid or binding unless made in writing by the Manager. Changes to the Contract Time or Contract Amount, if any, shall be made and determined in accordance with Title 11. Should the City find it necessary to accelerate or decelerate any other contractor's work as a result of the acts or omissions of the Contractor, the Contractor shall be liable for all additional costs connected therewith in addition to any liquidated damages which may otherwise result from failure to complete the Work within the Contract Time. The City may deduct all such amounts from amounts otherwise payable to the Contractor under the Contract.

## **TITLE 8 - PROTECTION OF PERSONS AND PROPERTY**

### **801 SAFETY OF PERSONS**

- .1 The Contractor is responsible for the health and safety of each and every person on or at the Work site. The Contractor shall take all necessary and reasonable precautions and actions to protect all such persons from injury, death or loss. Such actions shall include, but are not limited to:
  - A. Compliance with all applicable City, state or federal laws, occupational health and safety laws, ordinances, rules and regulations, Executive Orders and other orders. The City shall have the right at any time to request a safety compliance review by the Occupational Safety and Health Administration (OSHA) of the Contractor's and its Subcontractor's and Supplier's safety policies, practices and procedures.
  - B. Preparation and implementation of a Contractor's safety program complying with all of the requirements stated above.
- .2 The Contractor shall employ at the Work site a responsible qualified person whose duties shall include the protection of persons and property and the administration of the Contractor's safety program. This person must have safety training, a working knowledge of the requirements stated in GC 801.1, and experience administering safety programs. The Contractor shall provide the Project Manager with this person's name prior to the start of construction.
- .3 This Title shall be interpreted in its broadest sense for the protection of persons and property, and no act or omission to act by the City, its officers, employees or agents, or by any Designer shall relieve the Contractor of any of its obligations and duties hereunder.
- .4 Prior to the start of construction, the Contractor shall provide the Project Manager with a statement signed by the Contractor's Superintendent that all Contractor Personnel have been or will be briefed on the Contractor's Safety Program prior to being allowed on the Work site.
- .5 The Contractor shall provide to the Project Manager a complete copy of any OSHA correspondence, report, warning, citation, directive or notice within twenty-four (24) hours after it is received. The Contractor shall also provide the Project Manager a copy of any Contractor reply to any OSHA correspondence, report, warning, citation, directive or notice. This submittal is for informational purposes only and shall not alter the Contractor's responsibilities for safety of the Work site.
- .6 The Contractor shall provide a copy of the Employer's First Report of Injury for any lost time accident or any injury that requires off-site medical treatment to the Project Manager within forty-eight (48) hours after the Contractor becomes aware of such accident or injury. This submittal is for informational purposes only and shall not alter the Contractor's responsibilities for safety of the Work site.

## **802 PROTECTIVE DEVICES AND SAFETY PRECAUTIONS**

- .1 The Contractor shall provide all necessary protective devices and safety precautions. Such devices and precautions may include but are not limited to: posting of danger signs warning against hazards such as, but not limited to, hoists, well holes, elevator hatchways, scaffolding, openings, stairways, trip and fall hazards and falling materials; placement of warning flares; equipment back-up alarms; installation of barricades; promulgation and application of safety regulations and employment of safety personnel and guards. Signs will not be considered to be an adequate substitute for physical protective barriers. The costs of all protective devices and the planning and implementing of safety precautions are considered to be included in the Contract Amount.
- .2 If, in the opinion of the Deputy Manager, the Contractor has not supplied necessary and adequate barricades, warnings, or other safety devices, then the Deputy Manager may order additional devices and deduct the cost from the Contractor's payment. By taking such action, the City assumes no liability for the adequacy of such barricades, warnings or other safety devices.

## **803 PROTECTION OF PROPERTY AND WORK IN PROGRESS**

- .1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage to, or loss of:
  - A. All or any part of the Work and all or any part of materials and equipment to be incorporated therein, whether in storage on or off the Work site, under the care, custody or control of the Contractor, its Subcontractors, manufacturers, materialmen or Suppliers of any tier;
  - B. Other property at the Work site or adjacent thereto, including trees, shrubs, lawns, irrigation systems, walks, pavements, roadways, structures, and utilities; and
  - C. The work of the City or other contractors; provided, however, that the Contractor shall not be responsible to furnish the direct protection of the work of the City or other contractors.
- .2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations, Executive Orders and lawful orders of any public authority bearing on the safety of property or its protection from damage or loss and further, shall cooperate and keep the City and other contractors informed of all of the Contractor's precautions for the protection of the Work.
- .3 The Contractor shall be solely responsible for the design, installation, maintenance, bracing, shoring, and securing of temporary structures required in the execution of the Work. The Contractor shall take all reasonable precautions to ensure 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 Work and shall provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within any building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping reasonably required to keep excavations, floors, pits, and trenches free of water.

- .4 If any of the Contractor's operations destroy or damage any property, public or private, the Contractor shall promptly repair or replace such property at Contractor's cost, to the satisfaction of the Project Manager, before the City will accept or pay for the Work performed under the Contract. If the Contractor fails to repair or replace such property, the City, at the sole discretion of the Manager, may undertake such repair or replacement and deduct the cost of the same from amounts payable to the Contractor under the Contract.

**804 PROTECTION OF MUNICIPAL, PUBLIC SERVICE OR PUBLIC UTILITY SYSTEMS**

- .1 Before any Work is started, the Contractor shall communicate with all governmental agencies and private entities that have jurisdiction over municipal, other public service or other utility systems that might be affected by the Work and shall contact the appropriate utility locator service organization for the locating and marking of such municipal, other public service or other utility systems. The Contractor shall be responsible for all scheduling and coordination of Work with such systems and utilities. The City shall have no responsibilities or liabilities for delay or other impact to the Work caused by the acts or omissions of such other agencies or entities. After Work is begun, the Contractor shall perform in a manner designed to reduce to a minimum the potential for disrupting the operations of municipal, other public service or other utility systems. In particular, when a municipal, other public service or other utility system can be affected by Work performed by the Contractor, the Contractor is required to contact the agency or entity responsible for operation of that system for instructions on how best to proceed.
- .2 The list that follows is not intended to be complete and all inclusive, but merely to identify the systems that Contractors encounter most frequently. The names of listed organizations are subject to change from time to time:

<b>SYSTEM</b>	<b>AGENCY TO CONTACT</b>
Telephone	CenturyLink (or others, as applicable)
Roads	Transportation Division and Street Maintenance Division of the Department of Public Works
Public Transportation	Regional Transportation District and the Colorado Department of Transportation
Parks, Parkways and Medians	Denver Department of Parks and Recreation
Sanitary Sewer Collection	Wastewater Management Division of the Department of Public Works and the Denver Metropolitan Reclamation District
Storm Water Collection and	Wastewater Management Division of the Department of



Drainage Way	Public Works
Natural Gas, Steam, Electricity and Chilled Water Distribution	Public Service Company of Colorado d/b/a Xcel Energy
Water Distribution	Denver Board of Water Commissioners
Solid Waste Collection	Solid Waste Division of the Department of Public Works
Fire Alarm System	Denver Fire Department
Cable Television System	Comcast Corporation

### **805 PROTECTION OF STREET AND ROAD SYSTEM**

- .1 The City's street and road system includes but is not limited to permanent or temporary highway, street, alley, bikeway, pedestrian pathway, bridge and other road or related structures.
- .2 Except in emergencies, closing or otherwise obstructing any portion of the street and road system will be permitted only after the City has authorized the Contractor to do so. Under Department of Public Works construction Contracts, this authorization is granted by the approval of an appropriate Traffic Maintenance Plan which has been prepared and submitted by the Contractor. Under Department of Aviation construction Contracts, this authorization is granted in writing by the Project Manager, after receipt of written notice from the Contractor at least forty-eight (48) hours before any road located within the City's Municipal Airport System shall be closed or otherwise obstructed by actions of the Contractor.
- .3 Should the Contractor do anything to impair or otherwise diminish the capabilities of any portion of the street and road system without an approved Traffic Maintenance Plan under a Department of Public Works Contract, or without first notifying the Project Manager under a Department of Aviation Contract, the City may withhold progress payments or suspend the Contractor's right to proceed with the Work. The Contractor shall be liable to the City for any costs associated with such unauthorized impairment to the street and road system.
- .4 The Contractor shall anticipate that any detours and provisions for temporary access to the Work site that are implied by the Technical Specifications or Special Conditions will be necessary and shall be presumed to have included the costs associated with such detours and provisions for temporary access in the original bid price.
- .5 Traffic control systems such as street signs, traffic signals, traffic lane markings, and any other equipment or facilities that aid in the control of traffic are important elements of the street and road system. These must be protected and the Contractor shall be liable for any damages to the system or any damages to persons and property that might result from

failures in the traffic control system that were caused by the Contractor's operations. The requirement that the Contractor notify any City agency or representative of activities that may have adverse affects on the street and road system does not relieve the Contractor of the responsibility for the protection of that system.

- .6 In addition, all signs, barricades, or other traffic control measures shall be in conformance with the requirements of the "Manual of Uniform Traffic Control Devices for Streets and Highways", US Department of Transportation, Federal Highway Administration, including State of Colorado supplements or as detailed in the Contract Documents.

## **806 PROTECTION OF DRAINAGE WAYS**

- .1 The Contractor shall be responsible for the preservation and protection of storm water collection systems and drainage ways that may be affected by Work under the Contract. This municipal service system is operated by the Wastewater Management Division, and at Denver International Airport by the Department of Aviation. The Contractor shall notify the Project Manager and the Deputy Manager for the Wastewater Management Division, or the Deputy Manager of Aviation for Planning and Development as applicable, when its Work may diminish the system's capabilities or may redirect water flows. This notification process shall not, however, relieve the Contractor of the responsibility for damage to persons and property that may result from changes to that system caused by the Contractor's operations.
- .2 The Contractor shall not bypass untreated or partially treated waste waters or waste materials to surface waters, storm sewers, or other drainage courses. All bypassing or pumping of sanitary sewage required during construction shall be to other sanitary sewer facilities approved by the Deputy Manager of Public Works for the Wastewater Management Division, or the Deputy Manager of Aviation, Planning and Development, as applicable. All existing sewer facilities shall remain in continuous and full operation during construction. All costs incurred for bypassing or pumping of sewage flows during construction shall be borne by the Contractor unless specifically otherwise provided for in the Special Conditions or Technical Specifications.

## **807 PROTECTION OF THE ENVIRONMENT**

- .1 The Contractor shall comply with all applicable federal, state and local environmental protection rules, laws and regulations and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated thereunder, including but not limited to the City's noise control ordinance, federal and state air quality standards for fugitive dust control, prevention of surface and groundwater contamination, and hazardous and other waste disposal practices and procedures.
- .2 If the City, as owner, is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding to have violated any such environmental protection rules, laws or regulations as a result of the Contractor's acts or omissions, the Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation, except that the Contractor shall not be required under this GC 807 to indemnify the City from any amounts which are attributable to the negligence of the City.

## **808 HAZARDOUS AND EXPLOSIVE MATERIALS OR SUBSTANCES**

- .1 In the event the Contractor encounters or discovers any hazardous materials or substances during its performance of the Work, it shall immediately take reasonable precautions concerning such hazardous material or substances and notify the Project Manager verbally and in writing of the existence of such materials or substances immediately upon discovery.
- .2 The Contractor shall exercise the utmost care and caution if the storage or use of hazardous materials or substances or explosives are required for the performance of the Work. Activities related to the purchase, storage, handling, use, removal, treatment, or disposal of such hazardous materials or substances or explosives shall at all times be the sole responsibility of the Contractor and shall be supervised and carried out by personnel properly qualified to perform such activities. However, under no circumstances shall activities requiring the purchase, storage, handling, use, removal, treatment or disposal of hazardous materials or substances or explosives be initiated without first notifying the Project Manager in writing of the proposed activity and receiving the Project Manager's written approval of such activity. The use, handling and storage of explosives will not be allowed on site unless they are required or explicitly permitted by the Technical Specifications.

## **809 ARCHEOLOGICAL AND HISTORICAL DISCOVERIES**

- .1 The Contractor is required to inform the Project Manager immediately upon discovery of any evidence that might suggest to a lay person that archaeological or historical materials or human remains may be present in the Work area. Upon making such a discovery, the Contractor shall do whatever is necessary to avoid disturbing that Work area or any such materials or remains. This may require that the Contractor's activities be redirected or stopped until the Deputy Manager determines how to proceed.
- .2 If as a result of the Contractor's efforts to preserve the potential discovery site, the Contractor's activities are delayed for longer than twenty-four (24) hours, the Contractor may submit a Contractor Change Request if it believes it is entitled to an adjustment in Contract Amount and/or Contract Time. Adjustments for such delay shall be considered by the City only for that portion of the delay which exceeds twenty-four (24) hours.

## **TITLE 9 - COMPENSATION**

### **901 CONSIDERATION (CITY'S PROMISE TO PAY)**

- .1 In consideration of the Contractor's promise of performance as detailed in the Contract Documents, the City promises to pay the amounts due the Contractor in accordance with the provisions of the Contract Documents.
- .2 The City's promise to pay for the Work that the Contractor promises to perform is limited by the City's Charter and its Ordinances. A payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of the Contract, encumbered for the purpose of the Contract and paid into the Treasury of the City or otherwise lawfully made available by the City. Unless authorized by law, (i) the City does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Contract is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Other limitations are found in the law that the Contractor is presumed to know. Three such limitations on payment are listed below:
  - A. Under no circumstances will the City be liable for any extra Work that has not been authorized by a properly executed Change Order, Change Directive or Field Order.
  - B. No Change Order, Field Order, Change Directive or other form of directive to the Contractor shall be issued, and no such order or directive shall be binding if issued, if: (i) it would directly cause the aggregate amount payable under the Contract to exceed the amount appropriated or otherwise lawfully made available for the Contract, or (ii) it would require the Contractor to perform additional compensable work which would cause the aggregate amount payable to exceed such appropriated or provided amount.
  - C. It shall be the Contractor's responsibility to verify that the amounts already appropriated or otherwise made available for the Contract are sufficient to cover the entire costs of the Work. Any work undertaken or performed in excess of the amount appropriated or otherwise made available is undertaken or performed in violation of the terms of the Contract, without the proper authorization, and at the Contractor's own risk.
- .3 Any limitations on the sources of funding for payments made under the Contract are stated in the Contract Form.

### **902 PAYMENT PROCEDURE**

- .1 Payment to the Contractor shall occur as set out in this GC 902 if the proper payment procedure is followed.
- .2 The Contractor shall submit a complete application for payment on the day of each month designated in writing by the Project Manager. The application for payment shall be submitted on the form and in the format required by the Project Manager. Applications

for payment shall be based on the Contract Unit Prices or the approved Schedule of Values described in GC 903.1.

- .3 The complete application for payment shall be submitted in accordance with the Special Conditions. The responsible party(s) identified in such Special Conditions (Project Manager and/or Designer) will review the application and either recommend to the Deputy Manager such amounts as reasonably determined are due or notify the Contractor in writing of the reasons for withholding approval. The application for payment, when recommended by the responsible party(s) identified in the Special Conditions and signed by the appropriate City Officials, establishes the total amount due the Contractor under a particular pay application. From this amount the sums already paid and the sums to be withheld are deducted. This application is then forwarded to the Manager of Finance for payment. The Manager of Finance will pay the Contractor upon approval of the payment application and all certified payrolls.
- .4 All applications for progress payments, except the final application, shall be subject to correction on subsequent applications, following the discovery of error.

### **903 SCHEDULE OF VALUES IN LUMP SUM CONTRACTS**

- .1 The Contractor shall furnish to the Project Manager, for review and approval, a Schedule of Values, in such detail as the Project Manager shall request, no later than thirty (30) Days prior to the issuance of the first pay application. The Schedule of Values shall show the amount included for each principal category of work and shall be in proper balance. Unit price items in the Schedule of Values shall be consistent with any bid item listing contained in the Bid Form. No pay application shall be submitted until the submitted Schedule of Values is approved in writing by the Project Manager.
- .2 Should the City issue a Change Order that decreases or increases the Contract Amount, the Schedule of Values shall be modified to reflect the amount of such decrease or increase and resubmitted to the Project Manager at least fifteen (15) Days prior to the pay application reflecting such increase or decrease.

### **904 UNIT PRICE CONTRACTS**

If payment for the major part of the Work performed under the Contract is based on specially identified units of construction rather than on a lump sum price, the Contract will be known as a Unit Price Contract. In a Unit Price Contract, the number of units set forth in the proposal may vary from the number of units actually measured when the Work has been completed. Should the measured number of units of any one unit designation vary by more than twenty-five percent (25%) from the number originally stated in the proposal for that designation, and should this difference in number of measured units change the total Contract value as originally bid by more than five percent (5%), the Contractor or the City may request that the unit price of that particular unit designation be renegotiated. Any change in a unit price resulting from such negotiation shall be binding only upon the full execution of a formal Change Order, reflecting such change.

### **905 PROGRESS PERIOD**

The starting and completion dates for each progress period may be determined by the Project Manager after discussion with the Contractor at the time of the Pre-Construction Conference.

Unless otherwise specified by the Project Manager, each progress period shall be thirty (30) Days in duration.

## **906 APPLICATIONS FOR PAYMENT**

- .1 As soon as practicable before the day of the month designated by the Project Manager for submittal of pay applications, the Project Manager and the Contractor will estimate the dollar value of Work completed during the previous progress period.
- .2 Each progress payment application shall show the estimated quantities or unit prices for all items listed in the Schedule of Values or the unit bid proposals. Each item shall include its proportionate share of overhead, profit, and all other associated expenses. For Unit Price Contracts, the quantities and unit prices shall be extended to show the total amount of each item of Work during the previous progress period and the summation of these amounts shall be the basis for the progress payment. For Lump Sum Contracts, Lump Sum pay items shall be broken down in accordance with the approved Schedule of Values.
- .3 The approved invoice value of materials and equipment delivered to the Work site but not yet incorporated into the Work or properly secured in a bonded and insured off-site location, if verified by the Project Manager, may be, at the sole discretion of the Deputy Manager, included in a progress payment. Evidence of such bonding and insurance shall be submitted by the Contractor before any such payment may be made. Such materials and equipment shall be separately identified in measurable units. Although the City may pay for such materials and equipment, the Contractor shall be solely responsible for the care of such materials and equipment, for replacing at no cost to the City any such materials or equipment that may be damaged, stolen or lost, and for incorporating such materials into the Work.
  - A. If the Contractor fails to maintain adequate protection from the elements or other adverse conditions, the Project Manager may at any time withdraw payment for such inadequately protected materials and equipment.
  - B. Materials or equipment for which the Contractor is requesting payment must be fully fabricated and complete units ready to be incorporated into the Work with no other fabrication required. The City will not pay for raw materials delivered to a fabricator's shop facilities.
- .4 Each progress payment application shall show each Subcontractor or Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. If the Contractor disputes a Subcontractor's or Supplier's entitlement to a portion of the previous progress payment, the Contractor shall submit to the City duplicate sets of a copy of a written communication from the Contractor to such Subcontractor or Supplier explaining the Contractor's determination not to render payment to such Subcontractor or Supplier, together with proof of service of such written communication upon such Subcontractor or Supplier.
- .5 The application for payment shall be signed. Such signed application for payment shall constitute a representation by the Contractor to the City that the Work has progressed to the point indicated; that the Work covered by the estimate is in accordance with the

Contract Documents; that the money received as a result of the application will be used to discharge the Contractor's obligations under the Contract and that the Contractor is entitled to payment in the amount requested. The Project Manager or the Designer, as appropriate, must also verify and certify the estimate of Work completed prior to any acceptance by the City.

- .6 By submitting an application for payment, the Contractor warrants that: (i) the title to the Work covered by the estimate of Work completed will pass to the City by incorporation into the completed Work; (ii) the Work covered by previous estimates of Work completed is free and clear of liens, claims, security interests or encumbrances, except for any interest created by retainage; and (iii) no Work covered by the estimate of Work completed is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or any other person or entity.
- .7 The Contractor shall not include in its application for payment any billing for defective Work or for work performed by Subcontractors or Suppliers if it does not intend to pay the Subcontractors or Suppliers for such work.
- .8 Approval of an application for payment of Work completed or actual payment by the City shall not foreclose the right of the City to examine the books and records of the Contractor to determine the correctness and accuracy of any item.

#### **907 RELEASES AND CONTRACTORS CERTIFICATIONS OF PAYMENT**

Beginning with the second application for payment, each application shall be accompanied by partial claim releases from all Subcontractors and Suppliers or, at the Deputy Manager's sole discretion, a Contractor's Certification of Payment completed by the Contractor for the previous month's payment, all in a form and format acceptable to the Project Manager. At a minimum, the application shall specifically identify those Subcontractors or Suppliers that participated in the Work completed during the previous progress period and set forth the dollar amount of such participation. The Deputy Manager in his or her sole discretion may waive requirements for partial claim releases.

#### **908 RETAINAGE**

- .1 The City shall deduct and retain a total of five percent (5%) from the total amount of approved applications for payment, including Change Orders. The City may also deduct in addition to retainage as stated above, the additional amount(s) of any and all outstanding claims pursuant to CRS §38-26-107 from each approved application for payment.
- .2 After ninety-five percent (95%) of the Work under a Department of Public Works construction Contract has been satisfactorily accomplished by the Contractor, the Manager of Public Works, in his sole discretion, may decrease the retained amount to a level that is no less than twice the value of the estimate of remaining Work. This GC 908.2 shall not apply to Department of Aviation construction Contracts.
- .3 Execution of the Contract by the Contractor shall constitute a waiver by the Contractor to claim any right of payment of interest upon any such retained funds, or to claim any right of payment of interest upon funds withheld under the provisions of CRS §38-26-107.

- .4 Substitution of securities in lieu of retainage, pursuant to CRS §24-91-101, et seq, is authorized for Contracts let through the Department of Public Works, but may not be for Contracts let through the Department of Aviation. Should the Contractor desire to substitute securities in lieu of retainage, specific provisions must be made through and accepted by the Manager and the City Attorney.

#### **909 ADDITIONAL WITHHOLDING OF PROGRESS PAYMENTS**

- .1 The City may, at any time, and at its sole discretion, withhold sums from progress payments due the Contractor in addition to the amounts withheld under GC 908. Such additional withholding may be made for any of the following reasons:
- A. Failure to repair, replace or remove defective Work.
  - B. Subcontractor or Supplier claims against the Contractor.
  - C. Failure to make payments to Subcontractors, or for labor, materials or equipment.
  - D. Failure to obtain or comply with necessary permits and licenses or to comply with applicable laws, ordinances, codes, rules and regulations or Executive Orders.
  - E. Failure to pay prevailing wages or failure to make the required reports.
  - F. Failure to comply with affirmative action, equal employment opportunity, or Small Business Enterprise, Minority Business Enterprise, Woman Business Enterprise, or Disadvantaged Business Enterprise requirements set forth in the Contract.
  - G. Failure to keep its Work progressing in accordance with the construction schedule.
  - H. Failure to maintain contract documentation including, but not limited to, updated schedules and record drawings, as required by the Contract Documents.
  - I. Failure to perform the Work in accordance with the Contract Documents.
  - J. Failure to maintain a clean and orderly Work site.
  - K. Failure to satisfactorily replace and or repair City property or the property of others destroyed or damaged during the progress of the Work.
  - L. Acts or omissions that have delayed the performance of another contractor which form the basis of a request that the City pay additional compensation to the other contractor.
  - M. Failure to maintain a safe Work site.
  - N. Impairment of the capacity or use of, or damage to, any road, street, public facility or other public property.
  - O. Failure of the Contractor to allow the City to inspect the Work as required or requested by the City.
  - P. Acts or omissions that have delayed the performance of work by other City Agencies.



- Q. Failure to pay City personal property, sales, use, occupational privilege, or other applicable taxes when due.
  - R. Failure to protect the City's interests.
- .2 Whenever the reasons for such withholding are removed, the City will make payment of the sums withheld with the next regularly scheduled progress payment.

## **910 FINAL ESTIMATE AND PAYMENT**

After the Work has been accepted, the Project Manager, Designer or Contractor, as appropriate, will prepare a final estimate of the total value of all Work performed under the Contract. This will include all extra Work properly authorized and performed. All prior estimates and payments shall be subject to correction in the final estimate and payment; but in the absence of error or fraud, it shall be understood that all estimates, when approved by the Manager, shall be conclusive evidence of the Work performed and materials furnished. At the time of settlement, there shall be deducted from the final estimate (i) all previous payments made to the Contractor under the Contract, (ii) all amounts chargeable to the Contractor, (iii) all liquidated damages due the City; (iv) all unpaid personal property tax, sales tax, use tax, and occupational privilege tax due the City; and (v) all damages and all other costs, expenses and charges properly chargeable to the Contractor under the terms of the Contract. Final settlement shall be made in accordance with Title 20.

## **911 ACCOUNTING OF COSTS AND AUDIT**

- .1 The Contractor shall keep and maintain and shall cause its Subcontractors, Suppliers and outside consultants to keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect all costs incurred pursuant to the Contract that may be the basis of a Contractor Change Request or a claim by the Contractor. Such records may include the bid estimate, receipts, memoranda, vouchers, and accounts of every kind and nature pertaining to the performance of the Work including but not limited to job cost ledgers, invoices from and payments to Subcontractors, Suppliers and materialmen, and records of home and field office overhead, as well as complete summaries and reports setting forth all reimbursable man hours expended and payroll records. All such records must be kept for six (6) years from the date of Final Completion or termination of Contract, in a form and manner satisfactory to the City, and in accordance with a system of accounting acceptable to the Manager.
- .2 The City, its Auditor, its representatives, funding agencies and any firm of auditors retained by the City, shall have access within the Denver-Boulder MSA area, upon advance notice in writing, to all the Work related records maintained by the Contractor and its Subcontractors, Suppliers and consultants, for the purpose of auditing and verifying the Contractor's costs or any other costs claimed to be due and payable hereunder. The City shall have the right to reproduce any such records, and the Contractor and its Subcontractors, Suppliers and consultants shall keep and preserve all such records for a period of at least six (6) years from and after Final Acceptance or termination of the Contract, whichever is first.

- .3 The Contractor shall include in all subcontracts, consulting agreements and any other agreements entered into by the Contractor pursuant to the performance of the Work, a provision to the effect that its Subcontractors, Suppliers, consultants or other parties shall observe and comply with all the obligations of the Contractor under this GC 911 in the same manner and to the same extent as the Contractor.
- .4 This GC 911 shall not limit the City Auditor's right to audit the records of the Contractor, Subcontractor or Supplier for compliance with the requirements of these General Conditions.

## **TITLE 10 - WAGES**

### **1001 PREVAILING WAGE ORDINANCE**

The Contractor shall fully familiarize itself and comply with DRMC §20-76, et seq, Payment of Prevailing Wages.

### **1002 POSTING OF THE APPLICABLE WAGE RATES**

The Contractor shall post in a prominent and easily accessible place at the Work site the “Auditor’s Notice to Employees” and the schedule of wage rates to be paid by the Contractor and all Subcontractors working under the Contractor.

### **1003 RATE AND FREQUENCY OF WAGES PAID**

- .1 The applicable Prevailing Wage Rate Schedule is set forth separately elsewhere in the Contract Documents. However, the Contractor is responsible for being familiar with and paying in accordance with the rates and classifications established pursuant to DRMC §20-76 which may be necessary to complete the Work, whether or not specifically bound herein.
- .2 Weekly, the Contractor and all of its Subcontractors shall pay all workers, mechanics, and laborers according to the rates and classifications established in the Contract Documents. Increases in prevailing wages subsequent to the date of the Contract for a period not to exceed one (1) year shall not be mandatory on either the Contractor or Subcontractors. Future increases in prevailing wages on a Contract whose Contract Time exceeds one (1) year shall be mandatory for the Contractor and Subcontractors as of the yearly anniversary date of the Contract. In no event shall any increases in prevailing wages over the amounts as stated in the Contract Documents result in any increased liability on the part of the City, and the possibility and risk of any such increase is assumed by the Contractor. Decreases in prevailing wages subsequent to the date of the Contract for a period not to exceed one (1) year shall not be permitted. Decreases in prevailing wages on a Contract whose Contract Time exceeds one (1) year shall not be effective except on or after the yearly anniversary date of the Contract.

### **1004 REPORTING WAGES PAID**

- .1 The Contractor and its Subcontractors who are performing work that is covered by DRMC §20-76 or other controlling law shall furnish to the City, for each week during which workers are employed under the Contract, copies of the payroll records of all such workers. These payroll records shall contain information showing the name, social security number, and wage classification of each worker, the number of hours worked by each worker, the hourly rate of pay of each worker, the shift(s) and hours worked, the check number of funds paid for each worker, the itemized deductions made from the pay of each worker, and the gross and net amount of pay received by each worker for the week. Upon request, the Contractor shall provide other documentation deemed necessary by the City. All copies of the payroll records shall be accompanied by sworn statements of the Contractor and Subcontractors that: the copies are true and correct and are the payroll records of all mechanics, workers, and laborers employed under the Contract; the

payments were made to the workers as stated in the payroll records; and no deductions were made other than those set forth in the payroll records.

- .2 The original of these payroll records shall be transmitted to the City Auditor. If required by the City Auditor, the Contractor will submit certified payroll information electronically on a system specified by the Auditor at no cost to the City.

#### **1005 FAILURE TO PAY PREVAILING WAGES**

- .1 No request for payment under the Contract will be approved unless the party presenting such pay request, or in whose behalf it is presented, has filed the reports and statements described in this Title, or while any such Contractor or any Subcontractor under it shall be in default in the payment of such wages as are required by these Contract Documents.
- .2 If any laborer, mechanic, or worker employed by the Contractor or any Subcontractor to perform work under the Contract has been or is being paid less than the rate of wages required by the applicable Prevailing Wage Rate Schedule, the Manager may suspend or terminate the Contractor's right to proceed with the Work, or such part of the Work as to which there has been a failure to pay the said wages. In the event of termination, the City may prosecute the Work to completion by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional costs to the City. In addition, the Contractor may be subject to sanctions, penalties, or debarment under D.R.M.C. §20-77.

## TITLE 11 - CHANGES IN THE WORK, CONTRACT PRICE OR CONTRACT TIME

### 1101 CHANGE ORDER

- .1 A Change Order is a written instrument signed by the Manager, other designated parties, and the Contractor, that contains their agreement upon all of the following matters:
  - A. The change(s), addition(s) or deletion(s) to the Work;
  - B. The amount of the adjustment in the Contract Amount, if any; and
  - C. The extent of the adjustment in the Contract Time or Period of Performance, if any.
- .2 No change of Contract Time or Contract Amount, or any other change to the Contract, shall be binding until the Contract is modified by a fully executed Change Order.

### 1102 CITY INITIATED CHANGES

- .1 General: The City may, without notification to any Contract surety, require the Contractor to perform additive or deductive changes to the Work without invalidating the Contract or the surety bond. All changes shall be accomplished by either a written Change Order or a written Field Order/Change Directive. If a Field Order/Change Directive is used, a Change Order will be executed when the terms of the change are agreed upon.
- .2 Change Request: When the City desires to initiate a change, the Project Manager will issue a Change Request informing the Contractor of the proposed change in the Work, and requesting the Contractor's detailed price proposal for such change. The Contractor, at no expense to the City and within the time period specified in the Change Request, shall provide the Project Manager with a complete and itemized proposal for the change in the Work, which shall include the estimated increase or decrease in the Contract Amount and/or increase or decrease in the Contract Time. Such increase or decrease shall be based on the criteria and methods described in GC 1104 and 1105. The Contractor shall be responsible for any delays in the Work and any additional costs to the City caused by its failure to submit a complete price proposal within the time provided. The Contractor shall participate with the City in prompt joint analysis and negotiations to finalize a Change Order. The issuance of a Change Request by the City is not a prerequisite to the issuance of a Field Order/Change Directive.
- .3 Field Order/Change Directive: A Field Order/Change Directive is a written order, signed by the Manager or his designated representative, which directs the Contractor to commence a change in the Work prior to complete agreement on or execution of a Change Order. A Field Order/Change Directive may be used when:
  - A. The City determines that the Contractor must proceed immediately to perform a change in the Work in order to avoid an adverse impact on the schedule or other work, or to avoid or correct a situation where the health or safety of persons may be affected, and sufficient time is not available to negotiate a Change Order; or

- B. The City and Contractor have not completed their negotiation and reached agreement on all of the terms of a Change Order, but the City requires the Contractor to proceed without such agreement.
- .4 Contractor's Duties: Upon receipt of a Field Order/Change Directive, the Contractor shall promptly sign the Field Order/Change Directive and return it to the Project Manager, and shall promptly proceed with performing the change in the Work. The Contractor, within twenty (20) Days after receiving the Field Order/Change Directive, shall provide the Project Manager with a complete and itemized proposal that includes the estimated increase or decrease in the Contract Amount and/or Contract Time attributable to the planned changes based on the criteria and methods described in GC 1104 and 1105. The Contractor shall be responsible for delays to the Work and any additional costs incurred by the City caused by its failure to submit complete pricing information within the time provided above.
- .5 Time and Materials:
- A. If the maximum cost of the change in the Work to be performed under a Field Order/Change Directive has not been agreed upon and reduced to writing in the actual Field Order/Change Directive, or if such change is not fully described under a unit price set forth in the Contract Documents or the Field Order/Change Directive, the Contractor shall proceed with such Work on a Time and Materials basis.
  - B. Whenever Work is performed on a Time and Materials basis, the Contractor shall fully document all costs associated with such Work. Beginning with the first Day such Work is performed, and on a daily basis thereafter, the Contractor shall submit to the Project Manager a daily itemization of all such costs in such form as the Project Manager may require.
  - C. The final Contract adjustment for Field Order/Change Directive changes in the Work performed on a Time and Materials basis shall be calculated in accordance with GC 1104.2.
- .6 Change Order to Be Executed: When the City and the Contractor reach agreement on an adjustment to the Contract Amount and/or Contract Time, such agreement shall be promptly executed as a Change Order. If the City requires Contractor to perform additional compensable work under a Field Order/Change Directive prior to executing a Change Order, Contractor shall submit its costs to perform the work as periodically completed in its monthly application for payment, and City shall reimburse such costs, subject to retainage and any applicable withholding. In no instance shall the City be required to periodically reimburse Contractor for such additional compensable work prior to Contractor submitting to City an estimate of the cost of the additional compensable work to be performed.

### **1103 CONTRACTOR CHANGE REQUEST**

- .1 General:
- A. If the Contractor: (i) receives any instructions, interpretations or directives which it believes are at variance with the Contract Documents or would require the

Contractor to accelerate or decelerate the Work; or (ii) identifies what it believes are errors or omissions of any kind, including design errors or omissions, in the Contract Drawings or Technical Specifications; or (iii) encounters a differing site condition; or (iv) is delayed in performing the Work; or (v) becomes aware of any other matter or circumstance that the Contractor believes might require a change in the Contract Documents, Contract Time, or Contract Amount, the Contractor shall give the Project Manager prompt written notice of such matter and request a Change Order in a document identified as a “Contractor Change Request.”

- B. Following submission of a Contractor Change Request, the Contractor shall diligently continue performance of the Contract to the maximum extent possible.
- C. All Contractor Change Requests shall be dated, numbered sequentially, and shall describe the action or event that the Contractor believes may require the issuance of a Change Order. The Contractor shall also provide a description of possible Contractor actions or solutions to minimize the cost of the Contractor Change Request and, when possible, provide an estimate of the adjustment in the Contract Time and Contract Amount which it believes is appropriate.

.2 Time Requirements:

- A. With respect to orders, instructions, directives, interpretations, determinations, or the discovery of any errors or omissions in the Contract Documents, a Contractor Change Request shall be submitted before the Contractor acts on them, but in no event more than five (5) Days after they were reasonably received or discovered.
- B. With respect to any differing site conditions, a Contractor Change Request shall be submitted before the conditions are disturbed, but in no event more than five (5) Days after the conditions are reasonably first discovered.
- C. With respect to delays, as set out below, a Contractor Change Request shall be submitted as soon as the Contractor reasonably has knowledge of the delay, but in no event more than five (5) Days therefrom.
- D. With respect to any other matter or circumstance that the Contractor believes would require a Change, a Contractor Change Request shall be submitted as soon as the Contractor reasonably has knowledge of the matter or circumstance, but in no event more than five (5) Days after the Contractor becomes aware of such circumstance or matter.

.3 Submittal Requirements and Waiver of Claims:

- A. If the Contractor does not submit a Contractor Change Request within the time required by GC 1103.2 above, any action by the Contractor related to such order, direction, instruction, interpretation, determination, design error or omission, or other matter, including delays or differing site conditions, will not be considered by the City as a change to the Work and the Contractor waives any claim for an adjustment on the Contract Amount or the Contract Time.
- B. The Contractor shall, within ten (10) Days after submitting a Contractor Change Request, provide the Project Manager with a complete and itemized proposal that

sets out as specifically as practicable the requested adjustments to Contract Amount, Contract Time or other Contract provisions, and that contains the other information described in GC 1103 through 1105. The proposal shall also contain a detailed explanation, citing all applicable provisions in the Contract Documents, which supports the Contractor Change Request. If the Contractor does not submit its itemized proposal for a Change Order within the time described above or within such extension which the Project Manager, in his discretion may have granted in writing, the Contractor waives any claim for an adjustment in the Contract Amount or Contract Time arising out of the act or event giving rise to or necessitating a Contractor Change Request.

- C. The Contractor shall furnish, upon request, all additional information and data that the Project Manager determines is needed to assist the City in evaluating and resolving the Contractor Change Request through negotiation. The Contractor shall give the City access to its books, correspondence, records, electronic data bases and files, and other materials relating to the work described in the Contractor Change Request, shall require its Subcontractors and Suppliers to provide the City with such access, and shall make its Personnel and that of its Subcontractors and Suppliers available to discuss and answer cost, schedule, and other questions related to such request. Clear and legible copies of all necessary supporting records shall be provided to the City at no cost. Failure to submit requested information may be a basis for denial of the request.

#### .4 Specific Provisions for Delay-Based Contractor Change Request

- A. If the Contractor Change Request is based in whole or in part on a delay of any kind or nature, the complete itemized proposal shall include the following information in addition to all other required information:
  - (1) The date, nature and circumstances of each event regarded as a cause of the delay;
  - (2) The names of all individuals acting on behalf of the City who are known or believed by the Contractor to have direct knowledge of the delay;
  - (3) If the Contractor claims acceleration costs of scheduled performance or delivery, the basis upon which acceleration arose;
  - (4) The identification of any documents and the substance of any oral communications known to the Contractor which substantiate, refute or concern such delay;
  - (5) A Critical Path Method (CPM) schedule corrected to reflect actual performance, showing delay impacts as separate tasks and Contractor's mitigation of such impacts; and
  - (6) The specific elements of Contract performance for which the Contractor may seek an equitable adjustment, including: (a) Identification of each Contract or schedule line item that has been or may be affected by such delay; (b) To the extent practicable, identification of the delay and disruption in the manner and sequence of performance, and the effect on



continued performance, that have been or may be caused by such delay; (c) Identification of labor, materials, or both, or other cost items including overhead and Subcontractor costs, that have been or may be added, deleted or wasted by such delay, and a statement that the Contractor is maintaining records by some generally accepted accounting procedure that allows the separately identifiable direct costs due to the delay, and those not incurred as a result of the delay, to be readily identified and segregated; and (d) Estimates of the necessary adjustments to Contract Amount, Contract Time and any other Contract provisions affected by the delay.

B. Any legal or administrative proceeding to review the awarding of the Contract to the Contractor, or to review the awarding of any other contract to any other contractor if the Contract is part of a City Project consisting of multiple City Contracts, shall not be considered a delay caused in whole or in part by the City or an act or omission within the control of the City or anyone acting on behalf of the City.

.5 Determination by Project Manager: The Project Manager shall respond in writing to any timely Contractor Change Request within ten (10) Days of receipt of the complete and itemized proposal in support of the request. Failure of the Project Manager to respond within such time period shall be deemed a denial of the Contractor Change Request. If a Contractor Change Request is denied by the Project Manager, in whole or in part, any claim for an increase in the Contract Amount or Contract Time arising out of the act or event described in the Contractor Change Request is waived unless the Contractor timely complies with the provisions of GC 1201 (Notice of Intent to Claim).

#### **1104 ADJUSTMENT TO CONTRACT AMOUNT**

.1 Contract Amount Adjustments: All adjustments to the Contract Amount shall be determined by using one or more of the following methods:

A. A negotiated lump sum. If requested by the City, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information that the City may reasonably require the Contractor to produce in order to permit the City to evaluate any lump sum Contractor Change Request. In pricing such proposals, the Contractor shall include estimates of the type of costs described in GC 1104.2;

B. Unit prices (as stated in the Contract Documents or subsequently agreed upon) multiplied by final verified quantities of work performed;

C. Costs as determined in a manner previously agreed upon by the parties, which include markups, that do not exceed those set forth in GC 1104.2 below; or

D. Time and Material costs as determined in the manner described in GC 1104.2, Calculation of the Contract Adjustment. These amounts may be reduced where necessary to take into account the cost of Base Contract Work, Work included in approved Change Orders, Work described in other Field Order/Change

Directives, idle time for workers and/or equipment when Work could have been performed in other locations or when the number of workers or amount of equipment provided exceeded the number or amount required to perform the Work, unsatisfactory Work, or Work that may be or was performed concurrently with the changed Work and which cannot be easily segregated from the changed Work.

- .2 Calculation of the Contract Adjustment: In no event shall the charge or credit to the City associated with any change exceed the sum of the following:
- A. Direct Labor. The actual net, direct increase or decrease in the cost of the Contractor's labor. Such cost shall include only the cost associated with the workers who actually perform the changed Work. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured.
  - B. Labor Burden. Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e., social security. The burden shall be itemized and include all small tools and miscellaneous supplies. The total labor burden for such small tools shall not exceed two percent (2%) of the Direct Labor cost.
  - C. Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Work. If actual costs are not available, this cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Such cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.
  - D. Equipment Costs. Without markup or operator, the lesser of (i) the actual net cost to the Contractor of owned or rented equipment, other than small tools; or (ii) the rental rate for such equipment as determined by using the following method(s):
    - (1) Equipment rental rates listed in the appropriate rental rate book currently in use by the Colorado Department of Transportation. If an item of equipment does not appear in the rental rate book currently in use by the Colorado Department of Transportation, the rental rates published by the Associated Equipment Dealers may be used as a basis for negotiating a rental rate for a particular piece of equipment. The Contractor shall provide all information necessary to determine the appropriate rental rate at the time the equipment is brought on the job. This shall include, but not be limited to, type, description, make, year, model, series, serial number, fuel type, transmission, wheel combination, GVW, capacity and equipment owner.

- (2) Rental equipment costs shall be determined using actual invoiced rates, less all discounts for basic equipment rental.
- (3) Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for Work described in a Change Order. If the equipment is also used on Base Contract Work, no mobilization or demobilization cost will be paid. Mobilization/demobilization costs will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, the costs shown in the actual invoice will be the basis for pricing.

E. Mark Up For Overhead And Profit.

- (1) The Contractor or Subcontractor of any tier who actually performs the Work shall be entitled to a markup of twelve percent (12 %) on the actual costs for items A through D in GC 1104.2 above. Bonds and insurance are compensated at direct cost without markup.
- (2) A supervising Subcontractor (if any) shall be entitled to a three percent (3%) markup on the actual price charged to the Subcontractor by a Subcontractor of lower tier.
- (3) The Contractor shall be entitled to a three percent (3%) markup on the actual price for the Subcontractor's work.
- (4) All of the Contractor's and Subcontractor's field and office overhead and supervision costs are included in the markups listed above.
- (5) Neither the Contractor nor Subcontractor of any tier, nor the City in the case of a credit, will apply or attempt to apply these percentage adjustments in a way that would pyramid either the cost or credit because of the involvement of a Subcontractor or sub-subcontractor. Written justification and approval shall be required for any percentages exceeding a total of fifteen percent (15%).

F. Bonds, Insurance, Permits And Taxes. The actual increases or decreases in the cost of premiums for bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

- .3 Totals as Equitable Adjustment. The Contractor agrees that the total of the above items constitute an equitable adjustment for any and all costs or damages resulting from a change.
- .4 No Equitable Adjustment for Obstruction by Contractor. No equitable adjustment shall be made as a result of costs resulting from any act, hindrance, obstacle, obstruction, interference or omission of the Contractor, its Subcontractors, Suppliers, or surety, or any other entity or individual acting on behalf of the Contractor.
- .5 Calculation of Certain Equitable Adjustments.

- A. In case of delay in completion of the entire Contract due to drawings, designs or specifications that are defective and for which the City is responsible, the equitable adjustment for delays or costs incurred prior to notification to the City of such defect shall only include the extra cost and time reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect.
  - B. An equitable adjustment shall not include increased costs for delay resulting from the Contractor's failure to continue performance during determination of any Contractor Change Request or claim.
- .6 Price Reductions for Defective Cost or Pricing Data. If it is later determined that pricing adjustments to the Contract were not correct due to incomplete or inaccurate pricing data by the Contractor or any Subcontractor or Supplier or that lower prices were reasonably available, the price shall be reduced accordingly and the Contract Amount modified by an appropriate Change Order.
  - .7 Variation in Quantity of Unit Priced Items. Where the quantity of a unit-priced item in the Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than twenty-five percent (25%) above or below the estimated quantity, and where this difference changes the total original Contract value by more than five percent (5%), an equitable adjustment in the Contract Amount may be made by Change Order. The equitable adjustment shall be based upon any increase or decrease in cost due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completing the Work, the Contractor may request, in writing, an extension of time in accordance with GC 1105.
  - .8 Disposition of Excess or Obsolete Property. When the cost of materials, supplies, equipment or other personal property made obsolete or excess as a result of a delay is included in the equitable adjustment, the Project Manager shall have the right to prescribe the manner of disposition of such property.

## **1105 TIME EXTENSIONS**

- .1 Any extension of the Contract Time must be requested in a Contractor Change Request that complies with all of the requirements of GC 1103. Failure to strictly comply with the timing and submittal requirements of GC 1103 and, if applicable, GC 1202, shall constitute a waiver of any request or claim.
- .2 If the Contractor is delayed at any time in the progress of the Work and such delay was caused, in whole or in part, by any act or omission of the City, Designer, any separate contractor, or by changes ordered in the Work, or by directed suspensions of the Work pursuant to Title 21, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any other causes beyond the Contractor's control, then the Contract Time may be extended by the Manager. Such extensions will be for such period of time as the Manager may in his sole discretion determine based upon the criteria of GC 1105.4; provided, however, that such delay could not have been avoided by the exercise

of due diligence by the Contractor and did not result from the acts or omissions of the Contractor and, provided further, that the Contractor has taken reasonable actions to mitigate or prevent further delays resulting from such causes.

- .3 If abnormal weather conditions are the basis for a request for an extension of the Contract Time, such request shall be documented by data substantiating that weather conditions were unusually severe for the period of time, and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation that establishes that the weather conditions experienced fall outside of the extreme ranges of weather data published by the National Climatic Data Center for the Denver Metropolitan Area for the ten (10) year period immediately preceding the date of the Contract. Regardless of actual weather conditions, any Day in which the Contractor is able to work eighty percent (80%) or more of its scheduled work force shall not be counted as an abnormal weather Day for purposes of calculating weather related time extensions.
- .4 Any adjustment in Contract Time shall be determined in accordance with the scheduling requirements in the Contract Documents. The Contractor shall support any request for an adjustment in Contract Time with a schedule produced in accordance with the Contract Documents that shows how and where the change has or will delay the completion of the entire Contract beyond the time limits set forth in the Contract Documents. This submittal shall include a description of the Contractor's efforts to reschedule work in order to mitigate the impact of the changes on the schedule. No extensions of Contract Time will be made for delay resulting from the Contractor's failure to continue performance during determination of any Contractor Change Request or claim.

## **TITLE 12- CONTRACTOR CLAIMS FOR ADJUSTMENT AND DISPUTES**

### **1201 NOTICE OF INTENT TO CLAIM**

- .1 After the Contractor has complied with the requirements of GC 1103 and if the Contractor receives a decision from the Project Manager that a requested Change Order or Field Order/Change Directive will not be issued, the Contractor does not agree with a decision on an equitable adjustment in compensation or time, the Contractor disputes a decision to assess liquidated damages or other charges against the Contractor or any other event occurs giving rise to a claim for additional compensation or time under the Contract; and the Contractor intends to submit a claim therefore, the Contractor shall submit, in letter form, a Notice of Intent to Claim to the Deputy Manager with a copy to the Project Manager.
- .2 The written Notice of Intent to Claim shall be clearly titled as such and dated. All such notices shall be numbered sequentially. Such Notice shall contain, at a minimum, the following:
  - A. Project title and number.
  - B. Date of the event giving rise to the Claim.
  - C. A description of the Claim and the events giving rise to the Claim, including the original request and the Project Manager's decision or denial.
  - D. The reasons why the Contractor believes additional compensation or time is due or charges were wrongly assessed.
  - E. An accounting or estimate of all additional costs associated with the Claim.
  - F. Contractor's plan for mitigating costs or delays associated with the Claim.
- .3 The Notice of Intent to Claim described above shall be given within ten (10) Days after (i) denial of any request for a change in the Contract Amount or Contract Time contained in a Contractor Change Request submitted pursuant to GC 1103, (ii) receipt of written notice that the City intends to assess liquidated damages or other charges against the Contractor or (iii) the occurrence of any other event or events giving rise to the Claim, with the exception of an appeal made in accordance with the provisions of GC 1802 (warranty work) or GC 2202 (termination for convenience).

### **1202 SUBMITTAL OF CLAIMS**

- .1 The Contractor shall, within twenty (20) Days after it submits a Notice of Intent to Claim (or within ten (10) Days in the event of a delay claim), submit to the Deputy Manager, with a copy to the Project Manager, a complete and itemized Claim that includes the claimed increase in Contract Time, and/or Contract Amount. The Contractor may request an extension of time to submit the Claim, which extension may be granted by the Deputy Manager, provided that good cause is shown. The Claim must be described in sufficient detail to allow the Deputy Manager to evaluate the basis of and costs associated with said Claim. A Claim for an increase in Contract Amount shall be submitted based on actual

costs whenever possible, rather than an estimate or opinion, shall be supported by invoices, time cards, and other business records commonly accepted in the industry, and shall comply with the requirements of GC 1104. Any Claim for delay made pursuant to GC 1105 shall also include the information required by GC 1105. The Claim shall be accompanied by copies of all Contract provisions or other documents supporting the Claim and a summary of the legal and factual theories supporting the Claim. A Claim for time extension must be accompanied by a Revised Construction Schedule reflecting the effects of the delay on the completion of critical activities and showing actions that the Contractor has taken or proposes to take to minimize the effects of the delay. The Claim shall also identify any measures the City can take to minimize the Claim.

- .2 The Contractor shall furnish, upon request, all additional information and data that the Deputy Manager determines is needed to aid in resolving the Claim through negotiation or is required to complete an evaluation of the Claim. The Contractor shall give the City access to its books, correspondence, records, electronic files and data bases, and any other materials relating to the Claim, shall require its Subcontractors and Suppliers to provide the City with such access, and shall make its Personnel and that of its Subcontractors and Suppliers available to discuss and answer cost, schedule and other questions relating to the Claim. Clear copies of all necessary supporting records shall be provided to the City at no cost. Failure to submit requested information may be a basis for denial of the Claim.
- .3 Failure to submit the Claim in writing within the time and in the manner described above, or within such extended time granted by the Deputy Manager, shall constitute a waiver by the Contractor of any right, equitable or otherwise, to make such Claim.
- .4 The Contractor shall submit with its Claim a notarized certificate, executed under penalties of perjury, that:
  - A. The Claim is made in good faith;
  - B. All supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
  - C. The amount requested accurately reflects that Contract adjustment for which the Contractor believes the City is liable; and
  - D. The prices stated for material and equipment are the lowest reasonably available to the Contractor and include all available discounts.
- .5 If the Contractor is an individual, the certification shall be executed by that individual; if the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor.
- .6 The Deputy Manager or his designee shall investigate, review, and evaluate the Claim and make a determination. Such determination shall be made in writing within sixty (60) Days of receipt of a completed and fully documented claim, unless special circumstances exist or the Claim is unusually complex, in which case the Contractor will be notified of any longer period. If no determination is made within sixty (60) Days, or by the end of any announced extended period of time, the claim is automatically denied.

- .7 If the Contractor disagrees with the Deputy Manager's determination, the Contractor may, within thirty (30) Days after the date of the Deputy Manager's written decision, petition the Manager for a hearing on the claim pursuant to GC 1301. In the event any Notice is deemed denied without action by the Deputy Manager under GC 1202.6, the Contractor may, within thirty (30) Days of the date denial is deemed to have occurred, petition the Manager for a hearing pursuant to GC 1301.
- .8 The Contractor shall proceed diligently with performance of the Contract, pending final resolution of any Claim made under this GC, and shall comply with any decision of the Deputy Manager pending final resolution of the Claim. Failure to proceed with the Work shall be grounds for suspension or termination of the Contract.
- .9 If the Contractor agrees with any determination or resolution by the Deputy Manager, such determination or resolution shall be processed as a Change Order.

### **1203 WAIVER OF CLAIMS**

Failure to strictly meet any of the requirements of this Title 12 in a timely and complete manner shall constitute a waiver by the Contractor of any and all right to adjustments of Contract Time or Contract Amount, either by administrative review or by any other action at law or equity.



## **TITLE 13 - DISPUTES**

### **1301 DISPUTES**

- .1 It is the express intention of the parties to this Construction Contract that all disputes of any nature whatsoever regarding the Construction Contract including, but not limited to, any claims for compensation or damages arising out of breach or default under this Construction Contract, shall be resolved by administrative hearing pursuant to the provisions of Section 56-106, DRMC for Public Works Department Contracts, pursuant to the provisions of DRMC §5-17 for Department of Aviation contracts or, with respect to appropriate issues involving Small Business Enterprise contracting, any federal Disadvantaged Business Enterprise program, or MBE/WBE compliance, by Section 28-33, DRMC.
- .2 The Contractor expressly agrees that this dispute resolution process is the sole and only dispute resolution mechanism that will be recognized and employed by the parties for any claims put forward by the Contractor, notwithstanding any other claimed theory of entitlement on the part of the Contractor or its Subcontractors or Suppliers.

## TITLE 14 - SITE CONDITIONS

### 1401 DIFFERING SITE CONDITIONS

1. The Contractor shall immediately, and before such conditions are disturbed, notify the Project Manager, first verbally and later with a properly documented letter, of the following:
  - A. Subsurface or latent physical conditions at the Work site differing materially from those indicated in the Contract Documents, or physical conditions differing from those conditions present at the time of bidding; or
  - B. Unknown physical conditions at the Work 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 Documents.
2. The City shall promptly investigate the conditions, and if it finds that such conditions do materially differ and could not have been discovered, or reasonably inferred, from the Contract Documents or a thorough inspection of the Work site by the Contractor, and such conditions cause an increase or decrease in the Contract Amount, or Contract Time, the City shall issue a Field Order/Change Directive as specified in GC 1102.
3. If the Contractor has not fully complied with the notice and submittal requirements of this GC 1401 and GC 1102, with particular attention to not disturbing the site prior to allowing the Project Manager to investigate the condition, the Contractor shall be deemed to have waived its right to assert a claim for an adjustment in the Contract Amount or Contract Time arising out of such differing site conditions.

### 1402 SITE INSPECTIONS AND INVESTIGATIONS

- .1 Site Conditions: Drawings and specifications defining the Work to be done were prepared on the basis of interpretation by Design Professionals of information derived from investigations of the Work site. Such information and data are subject to sampling errors, and the interpretation of the information and data depends to a degree on the judgment of the Design Professional. Information about the degree of difficulty of the Work to be done cannot totally be derived from either the drawings and specifications or from the Project Manager. The Contractor shall not be entitled to an adjustment to the Contract Time or Contract Amount for any condition which was or would have been evident at the time of a pre-bid site inspection. By executing the Contract, the Contractor represents that it has visited the site if and to the extent it believed necessary, familiarized itself with the location and conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents. The Contractor shall not be entitled to an adjustment to the Contract Time or Contract Amount for any condition which was or would have been evident at the time of a pre-bid site inspection.
- .2 Geotechnical and Other Design Professional Reports, Investigations and Tests:
  - A. The Contractor acknowledges that certain soils reports, borings, and other geotechnical data, more particularly described or referenced in the Technical

Specifications of the Contract, have been made available for inspection and review. The borings were made for the use of the City in the design of the Project and are not intended to be interpreted for use in temporary construction facilities designed by the Contractor.

- B. The City in no way warrants the accuracy or reliability of said borings and other geotechnical data or of the data, information or interpretations contained in said soils reports, and is not responsible for any deduction, interpretation, or conclusion drawn therefrom by the Contractor. Said soil reports may contain interpretations by Design Professionals of borings and geotechnical data obtained at the Work site. Such borings and geotechnical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the Design Professionals.
- C. The Contractor agrees that it will make no claims against the City if, in performing the Work, it finds that the actual conditions encountered do not conform to those indicated by said soil reports, borings and other geotechnical data, or those reasonably inferred therefrom or reasonably discoverable by a thorough inspection of the site by the Contractor.

## **TITLE 15 - PERFORMANCE AND PAYMENT BONDS**

### **1501 SURETY BONDS**

- .1 Payment and performance bonds must be issued by a corporate surety authorized to do business in the State of Colorado and approved by the Mayor, the Manager and the City Attorney.
- .2 Before the Contract is executed, the Contractor shall have furnished such surety bonds and appropriate Powers of Attorney as a guarantee of the faithful performance of the Contract and the payment of bills for labor and materials.
- .3 The Manager may direct, at his sole discretion, that the required payment and performance bonds be combined in a format approved by the City Attorney.

### **1502 PERFORMANCE BOND**

The Contractor must procure and pay for a performance bond which, when executed by the Contractor and surety, shall be a guarantee for the faithful performance and completion of the Work in strict accordance with the terms of the Contract. The performance bond shall also be a guarantee for the repair or replacement of all Work found to be defective or otherwise unacceptable during the Contract Time and through any warranty and guarantee periods. This bond shall be in the amount of one hundred percent (100%) of the dollar value of the Contract. The Contractor shall utilize the Performance Bond Form included in the Contract Documents.

### **1503 PAYMENT BOND**

The Contractor must procure and pay for a payment bond which, when executed by the Contractor and surety, shall be a guarantee that all those performing labor or furnishing materials, supplies, rental items, tools, and equipment for the performance of the Work under the Contract shall be paid. This bond shall be in the amount of one hundred percent (100%) of the dollar value of the Contract, and it shall meet the requirements of CRS §38-26-101, et seq, as amended. The Contractor shall utilize the Payment Bond Form included in the Contract Documents.

## **TITLE 16 - INSURANCE AND INDEMNIFICATION**

### **1601 INSURANCE**

To assure the City that the Contractor is always capable of fulfilling the specified indemnification obligations, the Contractor is required to purchase and maintain insurance of the kind and in the minimum amounts specified in the Contract Documents. However, the insurance requirements contained in the Contract Documents shall not be deemed to limit or define the obligations of the Contractor as provided elsewhere in these General Conditions. The Contractor shall be responsible for payment of all deductibles under such policies.

### **1602 DEFENSE AND INDEMNIFICATION**

- .1 To the fullest extent permitted by law, the Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are due to the negligence or fault of the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- .2 Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Contractor is not named as a Defendant.
- .3 Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- .4 Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain at its own expense any additional insurance that it deems necessary for the City's protection in the performance of this Agreement.
- .5 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## **TITLE 17 - INSPECTION AND DEFECTS**

### **1701 CONSTRUCTION INSPECTION BY THE CITY**

- .1 Persons who are employees of the City or who are under contract to the City will be assigned to inspect and test the Work. These persons may perform any tests and observe the Work to determine whether or not designs, materials used, manufacturing and construction processes and methods applied, and equipment installed satisfy the requirements of the drawings and specifications, accepted Shop Drawings, Product Data and Samples, and the Contractor's warranties and guarantees. The Contractor shall permit these inspectors unlimited access to the Work and provide, at no cost to the City, means of safe access to the Work. In addition, Contractor shall provide whatever access and means of access are needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the Work and shall respond to any other reasonable request to further the inspector's ability to observe or complete any tests. Such inspections shall not relieve the Contractor of any of its quality control responsibilities or any other obligations under the Contract.
- .2 The Building Inspection Division will perform building code compliance inspections for structures designed for human occupancy. It is the Contractor's responsibility to schedule and obtain these inspections. If a code compliance inspection results in a condition which will be at variance to the Contract Documents, the Contractor shall immediately notify the Project Manager and confirm such notification with formal correspondence no later than forty-eight (48) hours after the occurrence.

### **1702 AUTHORITY OF INSPECTORS**

Inspectors assigned to the Work by the Project Manager are authorized to reject any Work, any materials, or any component of the Work that is not as required or specified in the Contract Documents. Such rejection will be confirmed by the Project Manager in writing to the Contractor.

### **1703 OBSERVABLE DEFECTS**

- .1 Observable defects are those that are discoverable by routine testing and inspection procedures or by implementing special tests as required or implied by the Technical Specifications.
- .2 Defects discovered by the inspection process shall be repaired, removed, or replaced by the Contractor, at no cost to the City, as these are identified.

### **1704 DEFECTS - UNCOVERING WORK**

- .1 The City shall have the right to inspect all Work on an on-going basis to determine whether or not the Contractor's Work is adequate to provide the product as well as the quality of product for which the City contracted. Whether or not the Work is defective will be determined by comparing it to the Contract Drawings, Technical Specifications, accepted Shop Drawings and manufacturer's literature and further measuring it against the standard of quality implied by the Contractor's warranty. Also, should the appearance and performance of any element of the Work fail to conform to standards of the trade for

such Work, that Work may be declared defective. If defective Work is discovered during such inspections, the City shall have the right to charge the Contractor for its costs of reinspecting the Work after the defective Work is corrected.

- .2 If any portion of the Work is covered by the Contractor or otherwise is made inaccessible for inspection, it must, if required by the City, be uncovered for observation at the Contractor's expense. If the covered Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. Any Work that covers other Work prior to the reasonable opportunity to inspect such Work, or contrary to the request of the City or contrary to a Contract requirement will not be paid for until the quality of the covered work can be assured. The cost of obtaining such assurance shall be borne by the Contractor.

### **1705 LATENT DEFECTS**

- .1 Materials and equipment incorporated into the Work may have, or as a result of the construction process may develop, hidden defects. Such defects shall be known as latent defects, and, subject to applicable law, the Contractor shall guarantee that such latent defects, when discovered, will be remedied at no cost to the City.
- .2 If the City incurs additional costs in determining or verifying the existence of latent defects, such costs shall be reimbursed by the Contractor.

### **1706 REMOVAL OF DEFECTIVE MATERIALS AND WORK**

The Contractor shall remove from the Work and the Work site all defective materials or Work rejected by the City. Upon failure by the Contractor to remove and properly dispose of the rejected material or Work within ten (10) Days after receiving written notice to do so, the City shall have the right to charge the Contractor for its costs of having such material or Work removed and reinspecting the Work after the defective Work is corrected.

## **TITLE 18 - WARRANTIES, GUARANTEES AND CORRECTIVE WORK**

### **1801 CONTRACTOR'S WARRANTIES, GUARANTEES AND CORRECTION OF WORK**

- .1 The Contractor warrants that all parts, materials, components, equipment, systems and other items incorporated into the Work shall be new, unless otherwise specified, and suitable for the purpose used, and will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor also warrants that its workers will be sufficiently skilled to produce quality Work that is free of faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor, when requested, shall furnish the City with satisfactory evidence of the kind and quality of materials and equipment proposed to be incorporated into the Work. The Contractor further warrants that the construction processes and methods employed to perform the Work shall have in the past proven to be suitable for the results expected. If the Contractor proposes to use unproved or untried processes, products or methods, the Project Manager must be advised of that proposal, in writing, prior to using the proposed process. The City may permit such experimentation, and it may require special guarantees of the Contractor to cover the Work produced by any new and untried process, method or product.
- .2 The Contractor further warrants that it has full title to all parts, materials, components, equipment and other items conveyed to the City under the terms of the Contract, that its transfer of such title to the City is rightful and that all such parts, materials, components, equipment and other items shall be transferred free and clear from all security interests, liens, claims, or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof, at no cost to the City.
- .3 The Contractor shall promptly investigate, repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the Work which contain faults or defects whether such failures are observed by the City or Contractor at any time during the Contract Time or during the warranty and guarantee period. The Contractor shall bear all costs of investigating and correcting, which includes the design efforts necessary to correct such Work covered by the warranties and guarantees described in this GC 1801.3 or elsewhere in the Contract Documents. If repair or replacement of faulty items of the Work is necessary, proper temporary substitutes shall be provided by the Contractor in order to maintain the progress of the Work and/or keep systems operating without any additional costs to the City. The obligations of this GC 1801.3 shall survive termination of the Contract under the provisions of Title 22. Nothing herein shall limit the City's right to seek recovery for latent defects that are not observable until after the warranty or guarantee periods have run.
- .4 The Contractor's warranties and guarantees for all Work components shall continue for the following periods:
  - A. For Contracts executed under the authority of the Manager of Public Works, for a period of three (3) years after the date of Final Inspection for Work performed



within the Public Right-of-Way or permanent easements held by the City, or for a period of one (1) year after the date of Substantial Completion for Work constructed outside of the Public Right-of-Way, in accordance with GC 1902, or for such longer period of time as may be prescribed by the terms of any special warranties and guarantees required by the Contract Documents.

- B. For Work constructed on property comprising any portion of the City's Municipal Airport System, for a period of one (1) year after the date of Substantial Completion, in accordance with GC 1902, or for such longer period of time as may be prescribed by the terms of any special warranties and guarantees required by the Contract Documents.

The obligations of this GC 1801.4 shall survive termination of the Contract under the provisions of Title 22.

- .5 Nothing contained in this GC 1801 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the warranty periods set forth above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations and resulting damages other than specifically to correct the Work.
- .6 The Contractor, at its own expense, shall also investigate, repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the City, which is damaged as a result of any fault or defect in the Work, at no cost to the City.
- .7 All Subcontractors', manufacturers', and Suppliers' warranties and guarantees, express or implied, for any part of the Work and any materials used therein shall be obtained and enforced by the Contractor for the benefit of the City whether or not these warranties and guarantees have been assigned or otherwise transferred to the City. The Contractor shall assign or transfer such warranties and guarantees to the City if the City requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.
- .8 The Contractor shall specifically stipulate in all Subcontractor or Supplier contracts and purchase order forms for all materials and systems that the guarantee period begins with the date of Substantial Completion. The Contractor shall, during the course of the Work, specifically instruct Subcontractors and Suppliers that all written guarantees, that are due to be submitted to the City, shall indicate the initiation of the guarantee period as being the date of Substantial Completion.

## **1802 PERFORMANCE DURING WARRANTY PERIOD**

- .1 The Project Manager will notify the Contractor of defective Work that is found to be defective and fails to satisfy the warranties and guarantees described in GC 1801, or elsewhere in the Contract Documents, and the Contractor shall, within ten (10) Days or such longer time as may be requested and set forth in the notice, commence the repair,

replacement or correction of the defective Work. Should the Contractor fail to complete such Work within a reasonable period, the City may make the repairs or replacements at the expense of the Contractor. If the City determines that immediate action to make repairs, replacements or other corrections is necessary because of emergency conditions or to prevent further loss or damage, the City may proceed without notice to the Contractor, but at the expense of the Contractor.

- .2 If the Contractor does not proceed with the correction of such defective Work within the time fixed by written notice from the Project Manager, or in an emergency condition, the City may remove and store any defective materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of the removal and storage within ten (10) Days thereafter, the City may, upon ten (10) additional Days' written notice, sell the stored Work at auction.
- .3 If the proceeds of sale do not cover all costs that the City has incurred and which the Contractor should have borne, the difference shall be charged to the Contractor and the Contractor and its surety shall be liable for and pay such difference to the City.
- .4 If the Contractor does not agree that the Work is defective or the defective Work is its responsibility and if there are no emergency conditions, the Contractor may request review, in writing, of the Project Manager's decision in accordance with Title 13. If such review is not requested within ten (10) Days of the notification of defective Work, the Contractor shall have waived the right to contest its responsibility for the correction of the defective Work. Under emergency conditions, the Contractor shall immediately correct the alleged defective Work, and the question of responsibility for the expense shall be determined by the Deputy Manager, subject to the right of the Contractor to seek review within ten (10) Days of the City's notice allocating responsibility for the expense.
- .5 Should the City claim by written communication sent or mailed before the warranty or guarantee period expires that certain defective Work exists and that it requires repair or replacement, the warranty and guarantee period shall be automatically extended for as long as the defective Work exists.

## **TITLE 19 - SUBSTANTIAL COMPLETION OF THE WORK**

### **1901 CONTRACTOR'S NOTICE OF SUBSTANTIAL COMPLETION**

When the Contractor considers that the Work is substantially complete as defined in GC 119, the Contractor shall notify the Project Manager that the Work is completed to the required stage and is ready for inspection and shall include with its Notice of Substantial Completion of the Work a list of minor items (Contractor's punch list) to be completed or corrected that would not affect beneficial occupancy.

### **1902 INSPECTION AND PUNCH LIST**

Within ten (10) Days after receipt of the Contractor's Notice of Substantial Completion of the Work, the Designer, Project Manager, Contractor, and such other representatives as the Project Manager deems appropriate, shall make an inspection of the Work to determine whether the Work has been completed in accordance with the Contract Documents and to review the Contractor's punch list. If, in the sole opinion of the Project Manager, the Work has not been completed to the required stage under this Title 19, the parties shall cease the inspection, and all costs associated with such premature inspection, including any compensation for the Designer's additional services and the City's additional costs, shall be deducted from the payments then or thereafter due the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City. If the Work has been completed to the required stage under this Title 19, a punch list shall be prepared by the Designer and consist of those items listed by the Contractor to be completed or corrected as supplemented by those items observed and noted during the inspection. Failure to include any items on the punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

### **1903 CERTIFICATE OF SUBSTANTIAL COMPLETION**

When the Project Manager, on the basis of the inspection and with the Designer's recommendation, determines that the Work or designated portions thereof are complete, the Project Manager will prepare a Certificate of Substantial Completion of the Work, which shall establish the Date of Substantial Completion of the Work. The certificate shall state the responsibilities of the City and the Contractor for security, maintenance, property insurance premiums, and damage to the Work, list the items still to be completed by the Contractor, and fix the time within which the Contractor shall complete the items listed therein. The City shall be responsible for water, heat, and utilities unless otherwise agreed to and stated on the certificate. The Certificate of Substantial Completion of the Work shall be signed by the City and the Contractor to evidence their written acceptance of the responsibilities assigned to them in such Certificate. The date of Substantial Completion of the Work shall establish the date of completion for determining liquidated damages, but shall not otherwise alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

### **1904 RIGHT OF EARLY OCCUPANCY OR USE**

- .1 The City shall have the right to take early beneficial possession of and to use any completed or partially completed portions of the Work, even if Substantial Completion of

the Work has not occurred and even if the Work has not been finally accepted. Such beneficial possession and early occupancy shall not constitute Substantial Completion of such portions of the Work nor affect the City's right to assess liquidated damages as set out herein.

- .2 If the City elects to take possession of and to use any completed or partially completed portions of the Work prior to Substantial Completion, an inspection shall be made by the Contractor and the Project Manager. Based upon such inspection, the Project Manager will attempt to list all incomplete Work items observed, and shall provide the Contractor with such list. However, the absence of an item from the list shall not relieve the Contractor of responsibility to perform all of the Work. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with GC 2002.
- .3 At the time of such inspection, the parties shall also negotiate the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, property insurance premiums, and damage to the Work. These negotiations are subject to the final approval of the Manager.
- .4 In the event the Contractor believes there will be an additional cost associated with completion of the Work while the City occupies the Work in whole or in part under this GC 1904, the Contractor shall advise the Project Manager by Contractor Change Request of all such costs at or before the time of such inspection. If the Contractor fails or refuses to furnish such cost information, or fails or refuses to comply with the Contractor Change Request procedure contained herein, the Contractor shall be deemed to have waived any and all rights to assert any Claim therefore at any time thereafter.
- .5 If the City's need to occupy the Work prior to such time as the Work is complete is caused by the Contractor's failure to complete the Work within the stipulated Period of Performance, the Contractor shall bear any and all additional costs associated with completing the Work.

## **TITLE 20 - FINAL COMPLETION AND ACCEPTANCE OF THE WORK**

### **2001 CLEAN-UP UPON COMPLETION**

- .1 Prior to Substantial Completion of the Work, the Contractor shall remove all waste materials, excess materials, tools, and equipment such as scaffolding, temporary structures, and unneeded facilities such as fencing and sanitary facilities. Full compliance with GC 324 is required throughout the Contract Time.
- .2 The Contractor shall clean and replace broken or scratched windows, clean and repair all surfaces, and clean and adjust all units of equipment that are part of the various building systems.
- .3 The Work constructed under these Contract Documents must be clean as defined in the Technical Specifications and ready for full use before it is given a Final Inspection.
- .4 Final payment will not be made to the Contractor until all clean-up is done to the satisfaction of the Project Manager.

### **2002 FINAL COMPLETION AND ACCEPTANCE OF THE WORK**

- .1 Final Inspection. The Contractor shall notify the Project Manager in writing when all punch list items have been completed and all clean-up has been done. The Project Manager will then make the final inspection for the purpose of ascertaining that the Work has been fully completed in accordance with the requirements of the Contract Documents.
- .2 Final Acceptance. After the Project Manager has made the final inspection and is satisfied that the Work has been completed in accordance with the Contract, and is satisfied that all submittals have been made and accepted, all as-builts and record documents have been completed and accepted, all Change Orders executed, all final quantities agreed to, and all other Contract Requirements, except for possible future warranty and guarantee work have been accomplished, the Deputy Manager shall issue a document evidencing Final Acceptance. Final payment may then be processed in accordance with the requirements of GC 2003.

### **2003 FINAL SETTLEMENT**

- .1 The City shall not authorize final payment until all items on the punch list have been completed, a document evidencing Final Acceptance is issued, and the Notice of Final Settlement has been published. If the Work is substantially completed, but Final Completion thereof is prevented by the unavailability of materials, or other causes beyond the control of the Contractor, and if consistent with any applicable bond ordinance, the City, in its sole discretion, may release to the Contractor all amounts due except for a retainage of two (2) times the cost of completing the unfinished Work, pursuant to GC 908.2, as estimated by the City.
- .2 Before the City will advertise final settlement, the Contractor shall demonstrate to the operating personnel of the City the proper operation and maintenance of all equipment and systems, and deliver to the Project Manager:

- A. All guarantees and warranties;
  - B. Bound sets of required operations and maintenance manuals and instructions as required by the Contract Documents;
  - C. Record as-built drawings and technical specifications as required by the Contract Documents;
  - D. To the extent not already furnished, the number of copies of all As-Built Shop Drawings or submittal documents, required by the Contract Documents, but in no case less than two (2);
  - E. Satisfactory evidence that all payroll, material bills, taxes and other indebtedness connected with the Work have been paid or otherwise satisfied;
  - F. A complete and final, unconditional waiver or release of any and all lien and claim rights from each Subcontractor, materialman, Supplier, manufacturer and dealer for all labor, equipment and material used or furnished by each on the Work;
  - G. An Affidavit stating that there are no outstanding prevailing wage claims or disputes at either the City Auditor's Office or the US Dept of Labor concerning the Work;
  - H. Consent of the Surety to final payment;
  - I. All submittals required by the Contract Documents; and
  - J. Any other documents required to be furnished by the Contract Documents.
- .3 The Work shall be advertised (Notice of Contractor's Settlement) in accordance with CRS §38-26-107. This statute governs the maintenance and enforcement of claims for payment against the Project by Subcontractors, Suppliers and certain others. Final payment and settlement shall be made only after the Contractor has completed the foregoing requirements, and the City is satisfied that no claims by Subcontractors or Suppliers have been filed or remain pending.
- .4 If any unpaid claim for labor, materials, rental machinery, tools, supplies, or equipment is filed prior to the date set for final settlement, the City shall withhold from payments to the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn. Such payment or withdrawal shall be evidenced by filing with the Project Manager an unconditional receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. The City will withhold from payment any funds it may be required by law to withhold or that it may in the determination of the Manager be entitled to withhold, and final payment will not be made until, in the sole determination of the Manager, all conditions of the Contract and of law have been met.
- .5 In the event there are outstanding claims against the Contractor or its Subcontractors or for any other reason the Contractor is not able to fulfill one or more of the requirements of this GC 2003, the Manager may, at his sole discretion, waive the requirement; provided the surety on the Performance and Payment Bonds will agree to the City making

final settlement without in any way lessening or modifying the surety's liability under such Performance and Payment Bonds.

- .6 Final payment will not be made until all tax reports, properly certified, have been filed with the City and all sales, use and occupational privilege taxes have been paid. If any sales, use, occupational privilege or personal property taxes remain unpaid, the City shall withhold from payment to the Contractor sufficient funds to ensure the payment of the taxes. The Manager of Finance may treat these withheld funds as subject to tax lien under the applicable sections of DRMC §53-1, et seq., or CRS §39-1-101, et seq. The Contractor, however, retains all rights to protest, to a refund and to appeal, as set forth in any applicable sections of the Denver Revised Municipal Code and the Colorado Revised Statutes.
- .7 In the event an overpayment was made by the City, the Contractor shall immediately return amounts overpaid and provide the required documentation described herein.
- .8 At the time of delivery to the Contractor of the final payment, the Contractor shall execute and give to the City a Final Receipt for the same.
- .9 The acceptance of final payment shall constitute a waiver of all Claims by the Contractor except those previously made in accordance with GC 1301 which have been separately identified by the Contractor as unsettled in the final Project Application for Payment, and which the City agrees in writing may be set over for resolution after final payment.
- .10 All provisions of these Contract Documents, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment.

## **TITLE 21 - SUSPENSION OF WORK**

### **2101 SUSPENSION OF WORK**

- .1 The City may suspend all or any part of the Work by written order signed by the Manager, without invalidating the Contract, for such period or periods as it may deem necessary due to:
  - A. Any reason for the convenience of the City, with or without cause, including but not limited to the availability of funding for the Project;
  - B. An order from a state or federal court or administrative agency; or
  - C. The Contractor's failure to perform any provision of the Contract Documents.
- .2 Upon receipt from the Manager of an order to suspend the Work, the Contractor shall, within three (3) Days, submit a suspension plan to the Project Manager for acceptance. The plan shall describe how the Contractor will store all materials in a manner so that the materials will not become an obstruction or become damaged in any way, what cost effective methods it will employ to prevent damage to or deterioration of the Work and otherwise protect the Work, how suitable drainage will be provided, what temporary structures will be necessary, and how the Contractor will prepare for resuming the Work for the least possible remobilization cost. After the plan is accepted, the Contractor shall implement it in accordance with instructions received from the Project Manager.
- .3 Under no circumstance shall a suspension absolve the Contractor or the Contractor's sureties of the duties and responsibilities guaranteed under the performance payment bond(s). The Contractor shall again proceed with the Work when it is ordered to do so in writing by the Manager.
- .4 Upon the resumption of the Work for all suspensions not involving the Contractor's failure to perform in accord with the Contract Documents, adjustment of Contract Time, if appropriate, will be made pursuant to GC 1105. Adjustment of the Contract Amount, if any, will be within the Manager's sole discretion and shall not in any event, exceed the cost of the extra work resulting from such suspension. Such cost, if any, shall be determined in accordance with GC 1104.

### **2102 SUSPENSION OF THE WORK FOR THE CITY'S CONVENIENCE**

Upon decision to suspend the Work or any part of the Work for the City's convenience, the order of suspension will extend the Contract Time for the number of Days of such suspension if all Work is suspended. If the suspension applies to only a part of the Work, a time extension will not be authorized until the partial suspension has run and its effect on the entire Contract can be evaluated. In all cases of suspension for the City's convenience, the costs to the Contractor will be determined in accordance with GC 1104. Upon order of such suspension, the Contractor shall immediately begin to perform in a manner designed to minimize the costs of protecting the Work and maintaining it in a condition which will permit its resumption for the least possible remobilization cost.



### **2103 SUSPENSION BECAUSE OF ORDER OF CITY, STATE OR FEDERAL COURT OR AGENCY**

The order of suspension will identify the court or agency order which caused the suspension and will extend the Contract by the amount of time specified by the court or agency order. If the order causes suspension for an indefinite period of time and as a result a time extension cannot be established, the order of suspension will also be for an indefinite period of time. If the order is issued because of acts or omissions of the Contractor, the Contractor shall not be entitled to a time extension or payment for any additional costs it incurs.

### **2104 SUSPENSION RESULTING FROM CONTRACTOR'S FAILURE TO PERFORM**

If a suspension order results from the Contractor's failure to satisfactorily perform any of the provisions of the Contract, including but not limited to faulty workmanship, safety concerns, improper or inadequate manpower, equipment, supplies or supervision, or failure to perform the Work or pay employees, Subcontractors or Suppliers in a timely manner, the order will identify the reason, or reasons, for the order. In this circumstance, no time extension will be authorized for the Contractor and any costs to the Contractor resulting from such suspension order will not be reimbursed by the City. A suspension order issued under these circumstances will remain in effect until the Contractor has removed or corrected the grounds for the suspension, if applicable, or the order requiring such suspension expires by its terms.

## TITLE 22 - CITY'S RIGHT TO TERMINATE THE CONTRACT

### 2201 TERMINATION OF CONTRACT FOR CAUSE

- .1 The City may terminate the Contract for cause due to the actions or inactions of the Contractor. Such reasons for termination include:
  - A. If the Work to be performed under the Contract is assigned by the Contractor without written permission of the Manager;
  - B. If the Contractor shall file a voluntary petition in bankruptcy;
  - C. If a general assignment of the Contractor's assets is to be made for the benefit of its creditors;
  - D. If a receiver is appointed for the Contractor or any of its property;
  - E. If the Contractor has materially breached any of the conditions, provisions or covenants of the Contract;
  - F. If, at any time, the performance of the Work under the Contract is being unnecessarily delayed or if the Contractor is willfully or deliberately violating any of the conditions, provisions, or covenants of the Contract, Drawings, or Technical Specifications, or if the Contractor is executing the same in bad faith or otherwise not in accordance with terms of the Contract;
  - G. If the Work or any part thereof is not fully completed within the time or times named for its completion or within the time to which such completion date or dates have been extended;
  - H. If the Contractor abandons the Work;
  - I. If the Contractor fails to maintain the required bonds, licenses, permits and/or insurance;
  - J. If the Contractor fails to comply with affirmative action or small business, minority, woman or disadvantaged business enterprise (SBE/MBE/WBE/DBE) requirements;
  - K. If the Contractor sublets more than the Contract allows;
  - L. If the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Contractor's business; or
  - M. If other just cause exists.
- .2 The Manager will send written notice to the Contractor of the City's intent to terminate for cause and will give the Contractor ten (10) Days from the date the notice was sent to cure the default or provide to the Manager in writing, a detailed plan of how it will

remove the causes for termination, except that, if the Contract completion date is less than ten (10) Days away, the notice may specify less than ten (10) Days. If the Contractor does not submit such plan within the time established, or if, in the judgment of the Manager, such plan will not ensure the satisfactory performance of the Work, the Manager may declare the Contract terminated on the effective date specified in the notice or any other date thereafter.

- .3 In the event of such termination, the Manager shall notify the Contractor to discontinue all Work under the Contract and the Contractor shall immediately respect such notice, stop all Work and cease to have any right to possession of the Work site. In addition, the Contractor shall forfeit its Contract as of the effective date of termination specified.
- .4 Upon such termination, the Manager may take possession of all materials, equipment, tools, and plant as may be on the site of the Work or necessary for completion of the Work and take over the Work and prosecute the same to completion, by Contract or otherwise, for the account and at the expense of the Contractor. The Contractor shall be liable to the City for any and all costs and expenses in excess of the Contract Amount or prices sustained by the City by reason of such prosecution and completion, which costs shall include all administrative costs.

## **2202 TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY**

- .1 The performance of Work under the Contract may be terminated without cause by the City in whole or in part whenever the Manager, in his sole discretion, shall determine that such termination is in the best interest and convenience of the City or whenever the City is prohibited from completing the Work for any reason. Such termination shall be effected by giving not less than three (3) Days' written notice to the Contractor specifying the extent to which performance of the Work is terminated and the date upon which such termination becomes effective.
- .2 Upon receipt of such notice of termination, the Contractor shall:
  - A. Stop work as specified in the notice;
  - B. Terminate all orders and subcontracts except as necessary to complete Work which is not terminated;
  - C. If directed in writing by the Manager to do so, assign all right, title, and interest in subcontracts and materials in progress, in which case the City will have the right, in its discretion, to settle or pay any or all Claims arising out of the termination of such subcontracts;
  - D. Settle outstanding liabilities and claims with the approval of the Manager;
  - E. Complete performance of such part of the Work as has not been terminated; and
  - F. Take such other actions as may be necessary, or as may be directed by the City, for the protection and preservation of the property related to the Contract.
- .3 Except as provided herein, any inventory resulting from the termination of the Contract may, with written approval of the Manager, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the City.

- .4 Upon receipt of notice of such termination, the Contractor shall submit to the Project Manager a request for final payment, in a form and with certification prescribed by the City. Such request shall be submitted promptly but in no event later than sixty (60) Days from the effective date of termination, unless extended in writing by the Project Manager upon the written request of the Contractor within such sixty (60) Day period. The final payment to the Contractor after a termination for convenience shall be calculated as follows:
- A. From the Contract Amount, subtract the following:
    - (1) The total amount paid to the Contractor to date;
    - (2) The value of the Work completed since the last approved pay request;
    - (3) The total amount of retainage withheld by the City to date;
    - (4) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired or sold by the Contractor or sold pursuant to the provisions of GC 2202.3 and not otherwise recovered by or credited to the City;
    - (5) The total of all claims the City may have against the Contractor; and
    - (6) Any outstanding claims pursuant to CRS §38-26-107, as amended or superseded.
  - B. Multiply the number resulting from Step A by 0.05. The number resulting is the full and complete compensation for anticipated profits.
  - C. Add the following to the total resulting from Step B:
    - (1) Any actual costs incurred by the Contractor for restocking charges;
    - (2) The agreed upon price of protecting the Work in the manner, if any, directed by the City;
    - (3) The amount of retainage withheld by the City to date; and
    - (4) The value of the Work completed since the last approved pay request.
- .6 The sum calculated from GC 2202.5, when paid to the Contractor, shall constitute full and final settlement of the Contract Amount.
- .7 The Manager may, from time to time, under such terms and conditions as the Manager may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled. If the total of such payments is in excess of the amount to which the Contractor is entitled, the excess shall be payable by the Contractor to the City upon demand, together with interest computed pursuant to statute, for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the City.

- .8 The settlement for the Work performed shall not relieve the Contractor or its surety from responsibility for defective Work and/or materials on the completed portion of the Work nor for labor and materials or any other items as guaranteed by the surety bond or bonds.
- .9 The City shall be given full access to all books, correspondence, records, electronic files and data bases, and other materials of the Contractor relating to the Contract in order to determine the amounts to be paid on account of the termination of the Contract under this GC 2202. The Contractor shall, as requested by the City, furnish clear copies of any such materials.
- .10 In the event the parties fail to agree in whole or in part on the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this GC 2202, the Contractor may appeal the Project Manager's determination as to the amount owed in accordance with Title 13, except that, if the Contractor has failed to submit its request for payment within the time provided above and has failed to request an extension of such time, it shall have no such right of appeal.

## **TITLE 23 - MISCELLANEOUS PROVISIONS**

### **2301 PARTIES TO THE CONTRACT**

Although other government entities may be involved in the Work performed under the Contract and other parties may be affected by that Work, it shall be understood that there are only two parties to the Contract--the City and the Contractor.

### **2302 FEDERAL AID PROVISIONS**

When the United States of America, acting through any of its duly constituted departments or agencies, provides funds to pay for any portion of the costs of Work performed under the Contract, the provisions of the Constitution, Laws of the United States and the rules and regulations promulgated by the department or agency thereof, pertaining to the utilization of such funds, shall be incorporated by reference as a part of the terms and conditions of the Contract and shall be observed by the Contractor. When the United States of America is involved as a result of providing funds to support the Work of the Contract, it may assign observers or inspectors as it deems necessary to ensure that purposes for which the funds were provided are achieved. However, such activity by the United States does not make it a party to the Contract and shall not interfere with the rights of either the City or the Contractor.

### **2303 NO WAIVER OF RIGHTS**

No assent by the City, expressed or implied, to any breach of any one or more of the terms, conditions, covenants, provisions, and agreements of the Contract Documents by the Contractor shall be deemed or taken to be a waiver of any succeeding breach.

### **2304 NO THIRD PARTY BENEFICIARY**

It is expressly understood and agreed that the enforcement of the terms and conditions of the Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and that nothing contained in the Contract shall give or allow any claim or right of action by any other or third person under the Contract. It is the express intention of the City and the Contractor that any member of the public, Subcontractor, Supplier, materialman, tradesman, vendor or other person or entity other than the City or the Contractor receiving services or benefits under the Contract shall be deemed to be an incidental beneficiary only.

### **2305 GOVERNING LAW; VENUE**

Each and every term, condition, or covenant in the Contract is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into the Contract as if fully set out in the Contract by this reference. Venue for any action arising under the Contract shall be in the Denver County Court or Denver District Court in the City and County of Denver, Colorado.

**2306 ABBREVIATIONS**

A General Condition is abbreviated as, and may be cited as, “GC.”

**2307 STATUTE OF LIMITATIONS IN C.R.S. § 13-80-102(1)(h)**

Any action arising out of or relating to the Contract or the Work asserted by Contractor against the City shall be brought within the time period set forth in C.R.S. § 13-80-102(1)(h) from when the action accrued, pursuant to C.R.S. § 13-80-102(1)(h).

This concludes the General Conditions of the Contract.

# INDEX

GC Number

Abbreviations.....	2306
Abnormal Weather Conditions .....	105
Accelerate Rate of Progress.....	704, 1103
Accounting of Costs.....	911
Actual Damages .....	602
Additional Withholding of Progress Payments.....	909
Adjoining Work .....	401
Adjustment to Contract Amount.....	1104
Administrative Costs.....	602
Administrative Hearing.....	1301
Adverse Weather Conditions .....	305
Advertise Final Settlement.....	2003
Advertising.....	322
Affirmative Action and Equal Employment Opportunity.....	210, 909, 1004
Application for Payment .....	902, 906, 908
Appropriate Conduct.....	311, 703
Archeological Discoveries .....	809
Artist Rights.....	320
As-Built Conditions .....	403
As-Built Drawings .....	402
Record Copy .....	324
Assistant Superintendent.....	213
Audit .....	911
Auditor .....	208, 911, 1004
Auditor’s Notice to Employees.....	1002
Authority of Inspectors .....	1702
Aviation .....	201
Bankruptcy.....	2201
Benchmarks.....	319
Beneficial Occupancy .....	119
Bid Shopping .....	502
Bonds	
Payment.....	1501, 1503
Performance .....	1501, 1502
Surety .....	1501
Breach of Contract .....	311, 2201
Building Code .....	205
Building Code Compliance Inspections.....	1701
Building Inspection Division .....	205, 317, 1701
Building Permit.....	205
Building Permit Fees.....	317
Business Occupational Privilege Tax .....	323
Buyout.....	502
Cable Television System.....	804
Calculation of Contract Adjustment .....	1104
Certificate of Occupancy .....	119
Certificate of Substantial Completion.....	1903
Certificate of Suitability.....	119
Certification of Payment .....	907



# INDEX

GC Number

Certified Payrolls .....	902
Change Directive .....	901, 1102
Change Order .....	401, 901, 1101, 1102
Change Request .....	1102
Changes, City Initiated.....	1102
City.....	101
City and County of Denver .....	101
City Attorney .....	210
City Engineer’s Office .....	206
City Initiated Changes.....	1102
City Sales and Use Taxes.....	323
Claims .....	906, 908, 909, 1103, 1201-1203, 2003
Cleanup During Construction .....	325
Cleanup Upon Completion .....	2001
Code Conformance .....	205
Communications .....	308, 309
Communications with the Contractor .....	213
Compensation .....	901
Competence of Contractor’s Work Force .....	310
Completion Date .....	306, 905, 2201
Computed Dimensions.....	401
Conduct of Contractor’s Personnel.....	312, 703
Consent of Surety.....	2003
Construction Inspection by the City.....	1701
Construction Machines .....	315
Construction Means and Methods.....	301, 704
Construction Processes and Methods.....	301, 704, 1801
Construction Schedule .....	306, 909
Construction Surveys .....	318
Contract.....	102
Breach .....	2201
Termination for Cause .....	2201
Contract Amount.....	103, 903, 908, 1102, 1202, 2101
Adjustments .....	1104
Contract Documents.....	104, 401
Contract Documents Precedence .....	401
Contract Drawings .....	401, 402
Contractor .....	106
Competence of Personnel.....	310
Conduct of Personnel.....	312, 703
Contractor Change Request .....	306, 404, 603, 809, 911, 1103, 1105
Contractor License .....	317
Contractor Personnel.....	107, 213, 702
Contractor’s Best Efforts .....	301
Contractor’s Safety Program.....	801
Contractor’s Superintendent .....	215, 307, 309
Contract Time .....	105, 302, 601, 602, 1101, 1102, 1103, 1105, 1202, 2101
Cooperation with Other Work Forces.....	701
Coordination .....	316, 702

# INDEX

GC Number

Coordination Drawings.....	702
Coordination Meeting.....	701
Copyrights.....	320
Correction of Work.....	1801
Criminal Offenses.....	502, 2201
Critical Path Method.....	306, 603, 1103
Cutting and Patching the Work.....	316
Damages, Actual.....	602
Days.....	108, 1105
Decelerate Rate of Progress.....	704, 1103
Decreases in Prevailing Wages.....	1003
Defective Work.....	305, 906, 909, 1704, 1706, 1802, 2202
Latent.....	1705, 1801
Observable.....	1703
Definitions.....	101
Delay Damages.....	603
Denver Board of Water Commissioners.....	203, 804
Denver International Airport (see Denver Municipal Airport System).....	201
Denver Municipal Airport System.....	201
Department of Aviation.....	201
Department of Public Works.....	203
Deputy Manager.....	109
Deputy Manager of Aviation for Planning and Development.....	202
Design Consultant.....	110
Designer.....	110
Designer of Record.....	110
Design Errors.....	1103
Design Professional.....	110
Design Professional Reports.....	1402
Detours.....	805
Development Fees.....	317
Differing Site Conditions.....	1103, 1401
Direct Labor Costs.....	1104
Disadvantaged Business Enterprise.....	207
Disputes.....	1301
Dust Control.....	807
Employee Occupational Privilege Tax.....	323
Environmental Quality Standards.....	807
Equal Employment Opportunity.....	207, 909, 1004
Equal or Equivalent.....	406
Equipment.....	315
Equipment Costs.....	1104
Equipment Rental Rates.....	1104
Equitable Adjustment.....	603, 1104
Exact Performance.....	303
Excess or Obsolete Property.....	1104
Explosive Materials.....	808
Extension of Time.....	1105, 1202
Extra Work.....	901, 910, 2101

# INDEX

GC Number

Failure to Pay Prevailing Wages .....	1005
Federal Aid Provisions .....	2302
Fees .....	316
Sewer .....	316
Tap .....	316
Zoning .....	316
Field Measurements .....	405
Field Order .....	901, 1102
Field Overhead .....	1104
Final Acceptance .....	2002
Final Completion .....	105, 111, 2002
Final Estimate .....	910
Final Inspection .....	2002
Final Payment .....	910, 2003
Final Receipt .....	2003
Final Settlement .....	2003
Fire Alarm System .....	804
First Report of Injury .....	801
Frequency of Wages Paid .....	1003
General Conditions .....	401
Governing Dimensions .....	401
Governing Law – Venue .....	2305
Guarantees .....	111, 1801
Hazardous Materials .....	808
Headings .....	401
Head Tax (see Employee Occupational Privilege Tax .....	323
Hearings .....	1301
Historical Discoveries .....	809
Increases in Prevailing Wages .....	1003
Indemnification .....	1602
Injuries .....	801
Inspection .....	1402, 1701, 1902
Building Code Compliance .....	1701
By the City .....	1701
Premature .....	1902
Site Inspection and Investigation .....	1402
Inspection Fees .....	317
Inspectors, Authority .....	1702
Insurance .....	1601
Intellectual Property Rights .....	320
Labor Burden .....	1104
Land Survey Control Grid .....	319
Latent Defects .....	1705, 1801
Latent Physical Conditions .....	1401
Liens .....	906
Releases (see Claim Releases) .....	906, 909
Limitations on Payment .....	901
Line of Authority .....	212
Liquidated Damages .....	602, 704, 910, 1201, 1903

# INDEX

GC Number

Lost Time Accident.....	801
Lump Sum Contracts .....	903
Maintenance Manuals .....	2003
Manager .....	112, 212
Manager of Aviation.....	112, 202
Manager of Public Works .....	112, 204
Manual of Uniform Traffic Control Devices for Streets and Highways.....	805
Markups .....	406, 1104
Materials and Workmanship .....	401
Mayor’s Office of Contract Compliance .....	210, 1004
Means and Methods .....	301, 704, 1701
Medical Treatment.....	801
Milestones .....	302
Minority Business Enterprise.....	207
Mobilization Costs .....	1104
Monuments .....	319
Noise Control .....	306, 807
Notice of Contractor’s Settlement.....	2003
Notice of Final Settlement .....	2003
Notice of Intent to Claim .....	1103, 1201
Notice to Apparent Low Bidder.....	323, 502
Notice to Proceed.....	105, 302, 306, 322, 601
Observable Defects .....	1703
Occupancy.....	1701, 1904
Occupational Safety and Health Administration.....	801
Office of Risk Management.....	211
Office Overhead.....	911, 1104
Operation and Maintenance Manuals .....	2003
Outstanding Claims.....	2003
Overhead.....	1104
Overpayment.....	2003
Parks Access and Construction Permit .....	317
Parks, Parkways, and Medians.....	804
Partial Claim Releases .....	907
Parties to the Contract.....	2301
Patented Devices, Materials and Processes.....	320
Patent Rights .....	320
Payment Application.....	901, 902, 906, 2003
Payment Bonds .....	1501, 1503, 2003
Payment Certification .....	907
Payment Procedures.....	902
Payment to Subcontractors .....	909
Payment Voucher.....	911
Payroll Records.....	911, 1004
Payrolls, Certified .....	902
Performance Bonds.....	1501, 1502, 2003
Performance During Warranty Period .....	1802
Period of Performance .....	1904
Permanent Land Control Markers.....	319

# INDEX

GC Number

Permits .....	205, 317, 909
Pest Control.....	325
Powers of Attorney .....	1501
Premature Inspection .....	1902
Prevailing Wage, Failure to Pay .....	909, 1005
Prevailing Wage Ordinance .....	1001
Prevailing Wage Rate Schedule.....	1003
Price Reductions for Defective Costs or Pricing Data.....	1104
Privity of Contract.....	502
Product Data.....	110, 113, 405
Progress Payment.....	805
Additional Withholding .....	909
Progress Payment Application.....	906
Progress Period .....	905
Progress Report.....	306
Project .....	114
Project Manager .....	115, 212
Project Signs .....	321
Promise of Performance.....	301
Promise to Pay .....	901
Protection of Drainage Ways .....	806
Protection of Environment.....	807
Protection of Property .....	803
Protection of Street and Road System.....	805
Protection of Work in Progress.....	803
Protective Devices .....	802
Public Buildings.....	317
Public Contact.....	703
Publicity .....	322
Public Safety .....	703
Public Transportation System.....	804
Public Utility Systems.....	804
Public Works.....	203
Punch List .....	111, 1901, 1902
Rate of Progress .....	704
Record Copy .....	324
Records .....	911
Referenced Standards.....	401
Reference Points .....	318
Regional Transportation District Taxes .....	323
Releases .....	907
Removal of Defective Materials and Work .....	1706
Reporting Wages Paid.....	1004
Requests for Clarification .....	404
Requests for Information .....	404
Retainage .....	906, 908, 2003
Substitution of Securities .....	908
Revised Construction Schedule.....	1202
Right of Early Occupancy or Use .....	1904

# INDEX

GC Number

Risk Management .....	211
Road Closures .....	703
Royalties .....	320
Safety .....	801
Safety Precautions.....	802
Sales or Use Taxes .....	323
Samples .....	110, 116, 405
Sanitary Facilities.....	326, 804, 2001
Scaled Dimensions.....	401
Schedule .....	306, 909
Critical Path Method .....	306,603,1103
Revised.....	1202
Time Scaled Network .....	306
Schedule of Submittals .....	309
Schedule of Values .....	902, 903, 906
Scientific and Cultural Facilities District Taxes .....	323
Security Interest .....	906
Sewer Fees .....	317
Shop Drawings.....	110, 117, 324, 401, 402, 405
Signs.....	320
Site Conditions.....	1401
Site Inspections and Investigations.....	1402
Site Tour .....	703
Small Tools .....	1104
Solid Waste Collection .....	804
Special Conditions .....	401
Equipment.....	315
State of Colorado Taxes.....	323
Storm Water Collection System (Storm Sewers).....	804
Street Closures .....	703
Street Signs .....	805
Subcontractor .....	118
Subcontractor Acceptance .....	502
Subcontracts.....	501
Submittal of Claims .....	1202
Submittals .....	309
Submittal Schedule .....	405
Substantial Completion.....	105, 119, 327, 602, 1801, 1901, 1903
Substituted Performance .....	304
Substitution of Materials and Equipment.....	406
Substitution of Securities .....	908
Suggestions to Contractor .....	313
Superintendent .....	213, 307, 309
Supplemental Drawings .....	117
Supplier .....	120
Surety .....	2003
Surety Bonds.....	1501
Survey Control Information.....	318, 319
Suspension Because of Order of City, State or Federal Court Agency.....	2103

# INDEX

GC Number

Suspension of Work.....	2101
Suspension of Work for the City’s Convenience.....	2102
Suspension Resulting From Contractor’s Failure To Perform.....	2103
Tangible Personal Property.....	322
Tap Fees.....	317
Taxes.....	323
Business Occupational Privilege.....	323
City Sales and Use.....	323
Employee Occupational Privilege.....	323
Regional Transportation District.....	323
Scientific and Cultural Facilities District.....	323
State of Colorado.....	323
Tangible Personal Property.....	323
Tax Exemption Certificate.....	323
Tax Reports.....	2003
Technical Specifications.....	401, 402
Telephone System.....	804
Temporary Access.....	805
Temporary Construction Facilities.....	1402
Temporary Drainage.....	803
Temporary Power, Lighting, Heating, Ventilating, Air Conditioning and Water Services.....	327
Temporary Structures.....	803
Temporary Zoning Permit for Trailers and Materials.....	317
Termination of Contract for Cause.....	2201
Termination of Contract for Convenience of the City.....	2202
Third Party Beneficiary.....	2304
Time, Float.....	306
Time and Materials.....	1102, 1104
Time Extension.....	404, 603, 1105, 1202
Time Scaled Network.....	306
Trademarks.....	320
Traffic Control Systems.....	805
Traffic Lane Markings.....	805
Traffic Maintenance Plan.....	805
Traffic Signals.....	805
Transportation Division.....	804
Uncovering Work.....	1704
Unit Prices.....	902, 906, 1104
Unknown Physical Conditions.....	1401
Utility Locator Service.....	804
Utility Shut-offs.....	703
Variation in Quantity of Unit Priced Items.....	1104
Vector Control.....	325
Venue.....	2305
Wage Rates.....	1002
Frequency.....	1003
Increases.....	1003
Waiver of Claims.....	1103, 1203, 2003
Waiver of Rights.....	2303

# INDEX

GC Number

Warranties .....	111, 1801, 1802
Warranty Period .....	1801
Wastewater Management Division .....	804
Water Board .....	203
Water Distribution System .....	804
Weather	
Abnormal Conditions .....	1105
Adverse Conditions .....	305
Withholding Progress Payments .....	909
Women Business Enterprise .....	207
Work .....	121, 1801
Defective .....	305, 906, 909, 1704, 1802
Work Force .....	314
Working Hours .....	306
Work Schedule .....	306
Written Communications .....	309
Zoning .....	206
Zoning Administration .....	206
Zoning Fees .....	317