

**SECTION 00110 BID #  
FL20-01-001**

**INVITATION FOR BID**

The City of Greeley, Colorado under Section 4.20.090 "Competitive Sealed Proposals" is soliciting proposals for GREELEY FISHING POND REMEDIAL ACTION PLAN IMPLEMENTATION & VEGETATIVE SOIL COVER CONSTRUCTION **before January 6, 2020 before 2:00 p.m.** at the Public Works Building, 1001 9th Avenue, Greeley, Colorado 80631. No late, faxed or electronic bids will be accepted.

The City of Greeley disseminates all bids and requests for proposals through the Rocky Mountain E-Purchasing System site. Go to <http://www.RockyMountainBidSystem.com>, then "Bid Opportunities" and then select "The City of Greeley". Bids submitted to the City of Greeley must include Sections 00120, 00130, 00140 and 00160. Addenda must be acknowledged in Section 00120 of the bidding documents. Bidders failing to acknowledge any and all addenda may be considered non-responsive.

A pre-proposal meeting will be held on December 5, 2019 at 9:00 am at the Public Works Building, 1001 9th Avenue, 1st Floor Conference Room, Greeley, Colorado. All prospective bidders are encouraged to attend.

Each bid shall be accompanied, in a separate sealed envelope, by a certified check drawn on a bank which is insured by the Federal Deposit Insurance corporation or a bidder's bond executed by a surety company authorized to do business in Colorado, made payable to the City of Greeley, Colorado, in an amount not less than five percent (5%) of the proposal sum as security that the successful bidder will enter into a contract to construct this project in accordance with the plans and specifications, and give bonds in the sum as hereafter provided. Checks accompanying bids not accepted will be returned.

The successful responsive and responsible bidder will be required to furnish a satisfactory performance bond and payment bond in the amount of the contract sum.

No bid shall be withdrawn after the opening on the bids without the consent of the City of Greeley, Colorado, for a period of sixty (60) days after the scheduled time of the receiving the bids.

The City of Greeley retains the right to reject any and all bids and to waive any informality as deemed in the best interest of the city.

Questions pertaining to the project may be directed to Brian Ward at [brian.ward@greeleygov.com](mailto:brian.ward@greeleygov.com) no later than December 26, 2019

Linda Ingram, Contract Specialist II

Greeley Website  
November 18,, 2019



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**CITY OF GREELEY  
Purchasing**

**Request for Proposal  
RFP #FL20-01-001**

**Greeley Fishing Pond  
Remedial Action Plan Implementation & Vegetative Soil  
Cover Construction**

**for**

**Public Works/Engineering Division**

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**REQUEST FOR PROPOSALS (RFP)**  
**RFP #FL20-01-001**

Procurement Contact: Linda Ingram  
Email Address: Linda.Ingram@greeleygov.com  
Telephone Number: 970-350-9325

**Proposals must be received no later than:**

January 6, 2020, before 2:00 p.m. local time at City of Greeley Public works, 1001 9<sup>th</sup> Avenue, Greeley, CO 80631

*Proposals received after this date and time will not be considered for award.*

**The City only accepts proposals in hard copy format and does NOT accept proposals submitted via fax or email. Proposals are to be submitted in a sealed package with the following on the outside of the envelope:**

Company Name

RFP Title: GREELEY FISHING POND REMEDIAL ACTION PLAN IMPLEMENTATION & VEGETATIVE SOIL COVER CONSTRUCTION

RFP Number: FL20-01-001

Due Date and Time: January 6, 2020 by 2:00 p.m.

Package must include: 3 hard copies and (1) complete copy of Proposal on a flash drive

**Deliver proposals to:**

City of Greeley  
Public Works  
1001 9<sup>th</sup> Avenue  
Greeley, Colorado 80631

<b>Schedule of Events (subject to change)</b>	<b>All times are given in local Colorado time</b>
RFP Issued	November 18, 2019
Optional Pre-Proposal Conference Optional Site Walk Immediately Following the Pre-Proposal Conference	December 5, 2019; 9:00 am Public Works Building, 1st Floor Conference Room
Inquiry Deadline	December 26, 2019 by 5:00 pm
Final Addendum Issued	December 27, 2019
Proposal Due Date and Time	January 6, 2020 by 2:00 pm
Interviews (tentative)	TBD
Notice of Award (tentative)	TBD

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## **EXHIBITS**

<b>Exhibit</b>	<b>Title</b>
1	Proposal Acknowledgement
2	Sample Contract
3	Insurance
4	Debarment Form
5	Remedial Action Plan (RAP), *includes VCP Application and Materials Management Plan (MMP)
6	Project Manual
7	Bid From

## SECTION I. BACKGROUND, OVERVIEW, AND GOALS

### A. Background & Project Area

The City of Greeley is requesting proposals for Remedial Action Plan (RAP) Implementation including the construction of a Vegetative Soil Cover for a historical solid waste dump site.

The proposed Greeley Fishing Pond Redevelopment site consists of three adjacent parcels identified as Weld County Assessor Parcel numbers 096121217001 (16.14-acres), 096121201023 (18.72-acres), and 096121100029 (3.79-acres). The parcels are located southeast of the City of Greeley, Weld County, Colorado. The parcels lie on the east side of 31<sup>st</sup> Street at 1<sup>st</sup> Avenue and make up the Greeley Fishing Pond and associated open space. Figures 1 and 2 below shows the project property and remedial extents. Figure 3 shows the proposed remedial cover extents. Detailed construction plans are included in the Site Project Manual included as an attachment to this RFP request under separate cover.





Environmental investigations performed by Terracon and others at the site have identified solid waste, asbestos containing material (ACM), arsenic, and semi volatile organic compounds (SVOCs) in site soils in exceedance of regulatory guidance action levels and regulatory standards. The site has been entered into the Colorado Department of Public Health and Environment (CDPHE), Voluntary Cleanup Program (VCP) to remediate the property and mitigate risks associated with the planned redevelopment of the property. Redevelopment of the property consists of the redevelopment of the site as City natural open space.

The remedial action plan outlined in the VCP application submitted to the CDPHE on November 8, 2018, and accepted by CDPHE on December 27, 2018, includes construction of an engineered vegetative soil cover and cleanup and removal of site debris and ACM. The vegetative soil cover is being installed to mitigate on-site environmental issues as outlined in the RAP which is included as an appendix to this RFP request under separate cover.

## B. Overview & Goals

The project will assist in satisfying the objectives outlined in the site-specific **VCP RAP**, with the objective of reaching a No Action Determination (NAD) with the CDPHE. The selected remedy for the site considers no new changes to the current planned development of the site and includes specific remedial tasks that will be implemented to mitigate and reduce long-term exposures to site soil contaminants (Vegetative Soil Cover). The remedy for the site considers the planned development of the site as a public park and natural open space with access to the Greeley Fishing Pond and future inclusion of newly developed public walking trails and includes specific remedial tasks that will be implemented to mitigate and reduce long-term exposures to site contaminants.

## SECTION II. STATEMENT OF WORK

### A. Scope of Services

The construction contractor shall outline their approach to the following scope of work items and list any known exclusions or exceptions to the Scope of Work as applicable. The project shall be awarded on a Not to Exceed or Lump Sum basis per task with a final reconciliation of units based on actual work performed. The Bid Schedule reports the estimated quantities for the project. Budget shall not be transferred between tasks without the approval of the City's Project Manager.

The project site has been identified as containing Regulated Asbestos Containing Soils (RACS) materials, potentially friable ACM, and semi-volatile organic compound (SVOC) contamination in soil, and all on site project work shall be overseen by qualified personnel with appropriate safety training such as Asbestos Awareness Training, CABI Certified, etc. The contractor shall observe all safety measures to protect its staff as appropriate considering the nature of the requested work and as outlined in the site-specific Materials Management Plan (MMP) included as an attachment to this RFP under separate cover. A site-specific Health and Safety Plan shall be required to be submitted to, and approved by, the City by the successful consultant prior to work commencing. The consultant is not required to submit a Health and Safety Plan as part of this Request for Proposal.

This scope of work generally includes:

- Project Coordination;
- Mobilization/Demobilization;
- Performance and Payment Bond;
- Stormwater Control Measures;
- Site Clearing and Grubbing;
- Subgrade Preparation;
- Construction of a Minimum Two-feet Thick Vegetative Soil Cover;
- Installation of a Geotextile Warning Barrier;
- Natural Area and Trails Fencing;
- Construction of an Aggregate Surface Course Access Road;
- Topsoil, Seeding and Mulching;
- Excavation and Relocation of ACM-Impacted Soil and Concrete;
- Removal of Accumulated Debris and Ditch/Bank Clean-up, and;
- Erosion Control

Detailed overview of individual project tasks and detailed specifications are included in the **Site-Specific Project Manual and Remedial Action Plan**, which should be used for costing purposes. A general overview of project scope of services are outlined in the following sections.

## **1 - Project Coordination**

Project coordination generally includes all office and administration functions necessary to properly manage the project in full. The project coordination task shall include but is not limited to:

- Kick Off Meeting and Preparation
- Monthly Project Management Meetings (1 Hour Progress Meetings)
- Correspondence (as required)
- General Data and Progress Documentation and Updates
- Quality Assurance

All meetings shall be held at the City of Greeley Public Works building. Meeting shall include all travel time and expenses associated with attending the meeting in full. No reimbursable expenses shall be allowed unless specifically identified as part of a task item in the scope of work. Reimbursable expenses for items such as printing, shipping, mileage, and other items shall be included as part of the task and not reimbursed separately.

## **2 – Mobilization/Demobilization**

The Earthwork Contractor shall mobilize all equipment, materials, personnel, etc. to the site and demobilize after completion of construction, leaving allocated work areas, including access road and capped areas, in a satisfactory condition. The Owner is not responsible for assisting the Contractor with unloading or loading of any materials or equipment. In addition to unloading geosynthetic materials, the Contractor shall be responsible for storing and protecting the materials from weather. Assume one mobilization for the project.

## **3 – Performance and Payment Bond**

The Earthwork Contractor shall furnish Performance and Payment Bonds in the amount equal to 100 percent of the contract price, on forms identical to the Performance and Payment Bond Form included with the contract documents as security for faithful performance of the Contract and payment of all obligations arising thereunder within the time frame set forth in the contract documents after receipt of the Notice of Award. The bond shall be executed by a surety company qualified and authorized to do business in the State of Colorado and are listed on the current United States Department of the Treasury's listing of approved sureties. The bond shall be executed by a resident or non-resident agent licensed by the State Insurance Commissioner, to represent the surety company and the agent shall file with the bond the power of attorney of the agent to act on behalf of the bonding company. The bond shall be written in favor of the Owner. Contractor shall file the bond appropriately in Weld County.

## **4 – Stormwater Control Measures**

The Earthwork Contractor shall be responsible for providing all necessary equipment and labor to control and pump storm water within the limits of the construction area for the duration of the project. The Work includes all steps necessary to maintain compliance with CDPHE stormwater requirements. Based on historical investigations at the site, it is not anticipated that dewatering will be required. Should dewatering be necessary, the Contractor will be responsible for the furnishing, operation, and maintenance of dry excavations, and shall pump out or otherwise remove and dispose of as fast as it may collect, any water or other liquids which may be found or accumulate in the excavations, regardless of whether it is perched water or liquid, groundwater, stormwater runoff, etc. If such water is muddy or carrying settleable solids, it shall be disposed of in a proper manner that allows for separation of the liquid and solids. Erosion Control – The Earthwork Contractor shall be responsible for providing all necessary materials, equipment and labor to install the silt fencing and any necessary erosion control measures as shown on the Contract Drawings and in accordance with the Technical Specifications.

## **5 – Site Clearing and Grubbing**

The Earthwork Contractor shall be responsible for stripping of vegetation and trees less than 8-inch caliper and undesirable trees 8-inch caliper and larger as designated by the Owner. Trees must be removed by a City of Greeley licensed arborist. Desirable trees 8-inch caliper and larger shall be preserved and protected and shall be incorporated into the work, in accordance with the Contract Drawings and Technical Specifications. Soil shall be stockpiled for reuse in the indicated stockpile locations identified on the Construction Drawings.



## **6 – Subgrade Preparation**

The Earthwork Contractor shall be responsible for light grading and proof-rolling of soils prior to placement of capping materials within the landfill capping area or placement of structural fill (if needed) and aggregate surface course in the access road corridor, in accordance with the Contract Drawings and Technical Specifications. Excavated soils shall be processed and/or stockpiled separately for reuse as soil capping materials in the landfill capping area or in the indicated stockpile locations identified on the Construction Drawings.

## **7 – Construction of Vegetative Soil Cover**

The Earthwork Contractor shall import capping soils from off-site borrow source, haul, place, and compact the minimum 24-inch thick recompacted soil cover in six-inch lifts above the prepared subgrade, in accordance with the Contract Drawings and Technical Specifications. Following placement of the first six-inch lift, the Earthwork Contractor shall place the 8 Oz/SY non-woven geotextile (GT) warning barrier set forth in item B7 below. Following placement of the GT, the Earthwork Contractor shall place and compact the remaining minimum 18-inch cover thickness. The compacted soil fill shall be capable of sustaining vegetative growth over the capping area.

## **8 – Installation of Geotextile**

The Earthwork Contractor or his designated Geosynthetics Installer shall install the warning barrier geotextile (GT) as shown on the Contract Drawings and in accordance with the Technical Specifications. Price includes all Work and Materials necessary to install an 8-ounce per square yard, non-woven GT overlying the first six-inch lift of the landfill compacted soil cap as shown on the Drawings. GT will be overlapped a minimum of six (6) inches and all appropriate actions taken to prevent rolling of GT or gaps in installation as outlined in specification 31 05 19.13.

## **9 – Natural Area and Trails Fencing**

The Earthwork Contractor shall provide and construct three-strand smooth wire fencing where shown on the Contract Drawings, and in accordance with the Technical Specifications.

## **10 – Construction of an Aggregate Surface Course Access Road**

The Earthwork Contractor shall prepare the access road corridor and place compacted structural fill if required; and purchase, haul, and stockpile or place roadway surface course aggregate to comply with the Contract Drawings and Technical Specifications (unless specifically identified as a pay item).

Payment for this task shall be on a lump sum basis for the unit price provided in the bid form and shall include all costs associated with completing the roadway preparation, structural fill and aggregated paving.

## **11 – Topsoil, Seeding and Mulching**

The Earthwork Contractor shall be responsible for the application of fertilizer, seeding, and mulch in accordance with the Construction Drawings and Project Specifications. A durable stand of actively growing vegetation shall be established. All vegetation efforts shall be coordinated with the Owner.

## **12 – Excavation and Relocation of ACM-Impacted Soil and Concrete**

ACM impacted material and RACS are present in the historical solid waste disposal area of the site. Identified ACM piles are labeled on the detailed site plans available in the Project Manual under separate cover. The objective of this task will be to isolate and compile all ACM to the location of the

site to be implemented with the cover to prevent any future exposure to ACM or removed from the site for disposal at an approved waste facility. Concrete debris with black mastic has been identified as being used as stabilizing ballast on the power poles on the south side of the property. This task will also include "selective-pick" of concrete material currently used as ballast around the power poles. Concrete material with black mastic attached will be placed on-site within the soil cover footprint or removed from the site and disposed of as ACM waste material. Concrete material without black mastic will be replaced as ballast material or crushed and reused or stockpiled on-site. Additionally, previously stabilized friable ACM areas, outlined on the site design and construction drawings, are to be graded as appropriate to cover design specifications, or removed from the site and disposed of as ACM waste following CDPHE guidance for handling of RACS. Handling of this **Friable ACM** material is to be handled with all appropriate safety measures as outlined by CDPHE and in the sections of the site MMP.

### **13 – Removal of Accumulated Debris and Ditch/Bank Clean-up**

Due to historical solid waste disposal and flooding, solid waste (rusted cars, dead trees, appliances, large waste items, etc.) has accumulated along the southern and eastern boundaries of the project site. Larger debris/solid waste material that is not able to be spread and contained under the proposed vegetative soil cover is to be collected and removed from the property as waste material.

### **14 – Erosion Control**

The Earthwork Contractor shall be responsible for providing all necessary materials, equipment and labor to install the silt fencing and any necessary erosion control measures as shown on the Contract Drawings and in accordance with the Technical Specifications.

#### **B. Period of Award**

The completion date of providing the required product and services shall be June 1, 2020. Significant risk from permitting and review delays is associated with this project. The contractor shall clearly communicate delays to the schedule with the City and request schedule variances within 10 days of the delay occurring. At no time shall the consultant delay the schedule of work past the timeline agreed to for CDPHE critical items.

If the City desires to extend the contract, no later than thirty (30) days prior to expiration, the City's Purchasing Contact may send a notice in writing to the vendor requesting firm pricing for the next twelve-month period. After the City evaluates the firm pricing proposal from the vendor, it will determine whether to extend the contract. All awards and extensions are subject to annual appropriation of funds. The provisions of the foregoing paragraphs with respect to extensions of the terms of the contract shall be null and void if the contract has been terminated or revoked during the initial term or any extension thereof. All decisions to extend the contract are at the option of the City.

## **SECTION III. ADMINISTRATIVE INFORMATION**

#### **A. Issuing Office:**

The City's contact name listed herein is to be the sole point of contact concerning this RFP. Offerors shall not directly contact other personnel regarding matters concerning this RFP or to arrange meetings related to such.

**B. Official Means of Communication:**

All official communication from the City to offerors will be via postings on an electronic solicitation notification system, the Rocky Mountain Bid System ([www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com)). The Purchasing Contact will post notices that will include, but not be limited to, proposal document, addenda, award announcement, etc. It is incumbent upon offerors to carefully and regularly monitor the Rocky Mountain Bid System for any such postings.

**C. Inquiries:**

Prospective offerors may make written inquiries by e-mail before the written inquiry deadline concerning this RFP to obtain clarification of requirements. There will be opportunity to make inquiries during the pre-proposal conference, if any. No inquiries will be accepted after the deadline. Inquiries regarding this RFP (be sure to reference RFP number) should be referred to:

E-Mail: Brian.Ward@greeleygov.com  
Subject Line: RFP #FL20-01-001

Response to offerors' inquiries will be published as addenda on the Rocky Mountain Bid System in a timely manner. Offerors cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

**Should any interested offeror, sales representative, or manufacturer find any part of the listed specifications, terms and conditions to be discrepant, incomplete, or otherwise questionable in any respect, it shall be the responsibility of the concerned party to notify the Purchasing Contact of such matters immediately upon discovery.**

**D. Insurance: (Exhibit 4)**

The successful contractor will be required to provide a Certificate of Insurance or other proof of insurance naming the City of Greeley as "additional insured". Coverage must include COMMERCIAL GENERAL LIABILITY coverage with minimum limits of \$2,000,000, and WORKER'S COMPENSATION coverage with limits in accordance with State of Colorado requirements.

COMPREHENSIVE AUTOMOBILE LIABILITY with minimum limits for bodily injury and property damage coverage of at least \$1,000,000, plus an additional amount adequate to pay related attorneys' fees and defense costs, for each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of this Agreement.

The City shall be named as additional Insured for General and Auto Liability Insurance.

Awarded offeror must present the City with proof of PROFESSIONAL LIABILITY COVERAGE with a minimum limit of \$1,000,000.

**E. Modification or Withdrawal of Proposals:**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

**F. Minor Informalities:**

Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors. The Purchasing Manager may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the City.

**G. Responsibility Determination:**

The City will make awards only to responsible vendors. The City reserves the right to assess offeror responsibility at any time in this RFP process and may not make a responsibility determination for every offeror.

**H. Acceptance of RFP Terms:**

A proposal submitted in response to this RFP shall constitute a binding offer. The autographic signature of a person who is legally authorized to execute contractual obligations on behalf of the offeror shall indicate acknowledgment of this condition. A submission in response to this RFP acknowledges acceptance by the offeror of all terms and conditions as set forth herein. An offeror shall identify clearly and thoroughly any variations between its proposal and the RFP in the cover letter. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP.

**I. Protested Solicitations and Awards:**

Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract must protest in writing to the City Manager as a prerequisite to seeking judicial relief. Protestors are urged to seek informal resolution of their complaints initially with the Purchasing Manager. A protest shall be submitted within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protests prior to bid opening or the closing date for proposals.

1. Stay of procurement during protests. In the event of a timely protest under Subsection (A) of this Section, the Purchasing Manager shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the City Manager makes a written determination on the record that the award of a contract without delay is necessary to protect substantial interest of the City. (Ord. 75, 1984 §2 (part))

**J. Confidential/Proprietary Information:**

All proposals will be confidential until a contract is awarded and fully executed. At that time, all proposals and documents pertaining to the proposals will be open for public inspection, except for the material that is proprietary or confidential. However, requests for confidentiality can be submitted to the Purchasing Contact provided that the submission is in accordance with the following procedures. This remains the *sole responsibility* of the offeror. The Purchasing Contact will make no attempt to cure any information that is found to be at a variance with this procedure. The offeror may not be given an opportunity to cure any

variances after proposal opening. **Neither a proposal in its entirety, nor proposal price information will be considered confidential/proprietary.** Questions regarding the application of this procedure must be directed to the Purchasing Contact listed in this RFP.

**K. Acceptance of Proposal Content:**

The contents of the proposal (including persons specified to implement the project) of the successful contractor shall become contractual obligations into the contract award. Failure of the successful offeror to perform in accordance with these obligations may result in cancellation of the award and such offeror may be removed from future solicitations.

**L. RFP Cancellation:**

The City reserves the right to cancel this RFP at any time, without penalty.

**M. Negotiation of Award:**

In the event only one (1) responsive proposal is received by the City, the City reserves the right to negotiate the award for the services with the offeror submitting the proposal in lieu of accepting the proposal as is.

**N. Contract: (Exhibit 2)**

A sample copy of the contract award the City will use to contract for the services specified in this RFP is included as Exhibit 2 for your review. The attached contract is only a sample and is not to be completed at this time.

**O. RFP Response/Material Ownership:**

All material submitted regarding this RFP becomes the property of the City of Greeley, unless otherwise noted in the RFP.

**P. Incurring Costs:**

The City is not liable for any cost incurred prior to issuance of a legally executed contract and/or a purchase order.

**Q. Utilization of Award by Other Agencies:**

The City of Greeley reserves the right to allow other State and local governmental agencies, political subdivisions, and/or school districts to utilize the resulting award under all terms and conditions specified and upon agreement by all parties. Usage by any other entity shall not have a negative impact on the City of Greeley in the current term or in any future terms.

**R. Non-Discrimination:**

The offeror shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

**S. News Releases:**

Neither the City, nor the offeror, shall make news releases pertaining to this RFP prior to execution of the contract without prior written approval of the other party. Written consent on the City's behalf is provided by the Public Information Office.

**T. Certification of Independent Price Determination:**

1. By submission of this proposal each offeror certifies, and in the case of a joint proposal each party, thereto certifies as to its own organization, that in connection with this procurement:
  - a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
  - b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other offeror or to any competitor; and
  - c) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
2. Each person signing the Request for Proposal form of this proposal certifies that:
  - a) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (1.a) through (1.c) above; or
  - b) He/she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (1.a) through (1.c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to (1.a) through (1.c) above.
3. A proposal will not be considered for award where (1.a), (1.c), or (2.) above has been deleted or modified. Where (1.b) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the City's Purchasing Manager, or designee, determines that such disclosure was not made for the purpose of restricting competition.
4. The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

**U. Taxes:**

The City of Greeley is exempt from all federal excise taxes and all Colorado State and local government sales and use taxes. Where applicable, contractor will be responsible for payment of use taxes.

**V. Assignment and Delegation:**

Neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

**W. Availability of Funds:**

Financial obligations of the City of Greeley payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void without penalty to the City.

**X. Standard of Conduct:**

The successful firm shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee as may be necessary.

The City may request the successful firm to immediately remove from this assignment any employee found unfit to perform duties due to one or more of the following reasons:

1. Neglect of duty.
2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
3. Theft, vandalism, immoral conduct or any other criminal action.
4. Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment for the City.

Agents and employees of Contractor or Consultant working in City facilities shall present a clean and neat appearance. Prior to performing any work for the City, the Contractor or Consultant shall require each of their employees to wear ID badges or uniforms identifying: the Contractor or Consultant by name, the first name of their employee and a photograph of their employee if using an ID badge. Their employee shall wear or attach the ID badge to the outer garments at all times.

**Y. Damages for Breach of Contract:**

In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any provision of this Contract, Contractor shall be liable for actual and consequential damages to the City.

**Z. Other Statutes:**

1. The signatory hereto avers that he/she is familiar with Colorado Revised Statutes , 18-8-301, et seq. (Bribery and Corrupt Influence) and 18-8-401, et seq. (Abuse of Public Office) as amended, and that no violation such provisions is present.
2. The signatory hereto avers that to his/her knowledge, no City of Greeley employee has any personal or beneficial interest whatsoever in the service or property described herein. See CRS 24-18-201 and CRS 24-50-507.

## **SECTION IV. PROPOSAL SUBMISSION**

Following are the response requirements for this RFP. All specific response items represent the minimum information to be submitted. Deletions or incomplete responses in terms of content or aberrations in form may, at the City's discretion, render the proposal non-responsive.

### **Offerors shall submit in a sealed package:**

- 3 Hard Copies and One (1) complete copy of Proposal on a flash drive

To facilitate the evaluation, offeror shall submit and organize all responses in the same order as listed in Section V. Proposals that are determined to be at a variance with this requirement may not be accepted. The City only accepts proposals in hard copy format and does not accept proposals submitted via fax or email.

Late proposals will not be accepted. It is the responsibility of the offeror to ensure that the proposal is received at the City of Greeley's Purchasing Division on or before the proposal due date and time.

The outside of the package will include the following information:

- Company Name
- RFP Number
- RFP Title
- Due Date and Time

## **SECTION V. RESPONSE FORMAT**

The following items are to be included in your proposal, in the order listed. Deviation from this may render your proposal non-responsive.

- A. Cover Letter.** Include a cover letter introducing your company, summarizing your qualifications, and detailing any exceptions to this RFP (please note that significant exceptions may make your proposal non-responsive). This letter should also provide principal contact information for this RFP, including address, telephone number, fax number, e-mail, and website (if applicable).
- B. Use of Subcontractors/Partners.** There may be areas for use of subcontractors or partners in this project. If you are utilizing this approach, your proposal must list the subcontractors/partners, their area(s) of expertise, and include all other applicable information herein requested for each subcontractor/partner. Please keep in mind that the City will contract solely with your company, therefore subcontractors/partners remain your sole responsibility.
- C. Company Information**
  1. Provide the following information as listed: Company Name, Address, Phone Number, and Names of Principals.
  2. Identify the year in which your company was established and began providing services.



3. Describe any pending plans to sell or merge your company.
4. Provide a comprehensive listing of all the services you provide.

**D. Evaluation Criterion #1 - e.g., Company and Personnel Qualifications**

1. Describe your customer service philosophy.
2. Provide information from at least three accounts of similar scope. Include, at a minimum, the following information: 1) company name, 2) contact name, 3) phone number, 4) fax number, 5) email address, 6) brief description of project scope and value, 7) status of project. The City reserves the right to contact the references provided in your proposal as well as other references without prior notification to you.
3. List the number of people that you can commit to working on this project and the amount of time each is expected to spend on the project. (List any discipline you would like to see - examples for a design services might be - design of HVAC, mechanical systems, electrical systems, architectural, structural, geotechnical, etc.)
4. Provide the names and resumes of the key personnel that will be performing the proposed services, including the primary project manager.
5. List the names of the subcontractors you expect to use, the services to be provided by the subcontractors and the amount of time that each is expected to spend on the project. Also, include the names and resumes of the key subcontractor personnel who will be working on the project.
6. Provide a specific timeline or schedule for the work. (Spell out mile marks if needed. Example: including development of preliminary design & cost estimates, meetings with City staff, completion of final design, cost estimates and bidding documents.) Show milestones and completion dates on the schedule.
7. Describe the methods and timeline of communication your firm will use with the City's project manager, other involved City staff, and other interested parties.

**Evaluation Criterion #2 – e.g., Approach to Scope of Work**

1. Describe any project approaches or ideas that you would apply to this project and that you feel would enhance the quality of your services.
2. Describe how the team will handle quality control, specifically how design issues would be monitored and resolved, plans checked and cross-referenced and bid documents ensured to be complete, accurate, and coordinated with subcontractors.

**Evaluation Criterion #3 - e.g., Value/Cost of Efforts**

1. Provide a cost for the consulting services and products broken down per task listed under the ***Scope of Services***, above. Show a breakdown of all reimbursable expenses required to complete the work. If applicable, the subcontractors' costs must be shown as separate items. Also, provide hourly rates for your firm and all subcontractors. These rates will be considered valid throughout the project.

**E. Proposal Acknowledgement: (Exhibit 1)**

Include this form as provided in Exhibit 1.

## **SECTION VI. EVALUATION AND AWARD**

### **A. Proposal Evaluation**

All proposals submitted in response to this RFP will be evaluated by a committee in accordance with the criteria described below. Total scores will be tabulated, and the highest ranked firm will enter into negotiations.

If the City requests presentations by short-listed offerors, committee members may revise their initial scores based upon additional information and clarification received in this phase. If your company is invited to give a presentation to the committee, these dates may not be flexible.

In preparing responses, offerors should describe in great detail how they propose to meet the specifications as detailed in the previous sections. Specific factors will be applied to proposal information to assist the City in selecting the most qualified offeror for this contract. Following is the evaluation criteria that will be used. Criteria will be assigned a points value.

1. Company and Personnel Qualifications – 35 points total
  - Firm related project experience, 15 points out of 35 points
  - Results of previous projects, 10 points out of 35 points
  - Qualifications of assigned personnel, 10 points out of 35 points
2. Approach to Scope of Work – 55 points total
  - Project and budget management program, 5 points out of 55 points
  - Firms quality assurance and quality control program, 10 points out of 55 points
  - Understanding of project requirements and project approach/proposal, 25 points out of 55 points
  - Familiarity with local area and project, 5 points out of 55 points
  - Proposed project schedule, must demonstrate firm's ability to meet schedule, 10 points out of 55 points
3. Value/Cost Effort – 10 points total
  - Estimate of design fees, 10 points. This estimate will be refined into a final fee proposal during the negotiation process with the successful firm.

A presentation and/or demonstration may be requested by short-listed offerors prior to award. However, a presentation/demonstration may not be required, and therefore, complete information should be submitted with your proposal.

### **B. Determination of Responsibility of the Offeror**

The City of Greeley awards contracts to responsible vendors only. The City reserves the right to make its offeror responsibility determination at any time in this RFP process and may not make a responsibility determination for every offeror.

The City of Greeley's Municipal Code defines a "Responsible Offeror" as one who has "the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance." The City reserves the right to request information as it deems necessary to

determine an offeror's responsibility. If the offeror fails to supply the requested information, the City shall base the determination of responsibility upon any available information or may find the offeror non-responsible if such failure is unreasonable.

**EXHIBIT 1**  
**PROPOSAL ACKNOWLEDGEMENT**

The offeror hereby acknowledges receipt of addenda numbers \_\_\_\_\_ through \_\_\_\_\_.

Falsifying this information is cause to deem your proposal nonresponsive and therefore ineligible for consideration. In addition, falsification of this information is cause to cancel a contract awarded based on one or both of the above preferences.

By signing below, you agree to all terms & conditions in this RFP, except where expressly described in your cover letter.

\_\_\_\_\_  
Original Signature by Authorized Officer/Agent

\_\_\_\_\_  
Type or printed name of person signing

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Vendor Mailing Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Proposal Valid Until (at least for 90 days)

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Website Address

**Project Manager:**

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Vendor Mailing Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Email Address

## SECTION 00140

### BID BOND

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto the City of Greeley, Colorado, as Owner, in the penal sum of \_\_\_\_\_ for the Payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors, and assigns.

THE CONDITION of this obligation is such that whereas the Principal has submitted to the City of Greeley, Colorado, the accompanying bid and hereby made a part hereof to enter into a Contract Agreement for the construction of City of Greeley Project,

### **Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

WHEREAS, the Owner, as condition for receiving said bid, requires that the Principal to deposit with the Owner as Bid Guaranty equal to five percent (5%) of the amount of said bid.

NOW, THEREFORE,

(a) If said bid shall be rejected; or in the alternate,

(b) If said bid shall be accepted and the Principal shall execute and deliver a Contract Agreement (properly completed in accordance with said bid) and shall furnish a Performance and Payment Bond upon the forms prescribed by the Owner for the faithful performance of said Agreement; and shall in all other respects perform the agreement created by the acceptance of said bid;

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

PRINCIPAL

SURETY

Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_ Attorney \_\_\_\_\_

In-Fact: \_\_\_\_\_  
(Seal) (Seal)

NOTE: Surety Companies executing bonds must be authorized to transact business in the State of Colorado and be accepted to the Owner.

## SECTION 00160

### NOTICE OF PRE-BID CONFERENCE

**RFP #FL20-01-001**

**GREELEY FISHING POND REMEDIAL ACTION PLAN IMPLEMENTATION &  
VEGETATIVE SOIL COVER CONSTRUCTION**

A pre-bid conference will be held:

On December 5, 2019 at 9:00 a.m., Public Works Building, 1<sup>st</sup> Floor Conference Room, 1001 9<sup>th</sup> Avenue, Greeley, CO 80631. All bidders are highly encouraged to attend.

Representatives of the City of Greeley will be present to answer questions.

Each bidder shall submit the following declaration of attendance, along with the other bid documents.

\*\*\*\*\*

I have attended the pre-bid conference \_\_\_\_\_

I have not attended the pre-bid conference \_\_\_\_\_

\_\_\_\_\_  
Name of Contracting Organization

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

## SECTION 00210

### NOTICE OF AWARD

DATE:

TO:

Re: **Greeley Fishing Pond Remedial Action Plan Implementation &  
Vegetative Soil Cover Construction - RFP #FL20-01-001**

Dear Contractor:

The City of Greeley, Colorado (hereinafter called "the Owner") has considered the bids submitted for referenced work in response to its Invitation for Bids. You are hereby notified that your bid has been accepted for items and prices stated in the Bid Schedule in the amount of \$\_\_\_\_\_. You are required to execute the Contract Agreement, provide the necessary insurance certificates, the Performance and Payment Bonds within ten (10) days from the date of this Notice. If you fail to execute said Contract Agreement and furnish the necessary insurance certificates and bonds within the time allotted from this date, the Owner will be entitled to consider your rights arising out of the Owner's acceptance of your bid as abandoned and to demand payment of bid guaranty as damages. The Owner will be entitled to such other rights as may be granted by law. You are required to return an acknowledged copy of this Notice of Award and enclosures to Purchasing.

CITY OF GREELEY, COLORADO

By: Joel Hemesath

Title: Director of Public Works

ACKNOWLEDGMENT: Receipt of the foregoing Notice of Award accompanied with a Performance and Payment Bond form and a signed copy of the Contract Document is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Bidder: \_\_\_\_\_

By: \_\_\_\_\_



## SECTION 00310

### CONTRACT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Greeley, Colorado, and under the laws of the state of Colorado, party of the first part, termed in the Contract Documents as the "Owner" and \_\_\_\_\_ party of the second part, termed in the Contract Documents as "Contractor."

WITNESSETH: In consideration of monetary compensation to be paid by the Owner to the Contractor at the time and in the manner hereinafter provided, the said Contractor has agreed, and does hereby agree, to furnish all labor, tools, equipment and material and to pay for all such items and to construct in every detail, to wit:

**PROJECT: Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

at the price bid on the Proposal Form of \$ \_\_\_\_\_ all to the satisfaction and under the general supervision of the Project Manager for the City of Greeley, Colorado.

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

The Project Manager named herein shall interpret and construe the Contract Documents, reconciling any apparent or alleged conflicts and inconsistencies therein; and all of the work and all details thereof shall be subject to the approval and determination of the Project Manager as to whether or not the work is in accordance with Contract Documents. Said City Project Manager shall be the final arbiter and shall determine any and all questions that may arise concerning the Contract Documents, the performance of the work, the workmanship, quality of materials and the acceptability of the completed project. The decision of the Project Manager on all questions shall be final, conclusive and binding.

AND FOR SAID CONSIDERATION IT IS FURTHER PARTICULARLY AGREED BETWEEN THE PARTIES TO THIS AGREEMENT.

1. That construction and installation of the above enumerated work for the Owner shall be completed and ready for use in accordance with the time of completion described in the Bid form of this Contract. That the above enumerated work shall begin within ten (10) days of the official "Notice to Proceed". (Contract shall become void if work is not started at specified time.)

2. That said work and materials for the project covered by the Contract Documents shall be completely installed and delivered to the Owner, within the time above stated, clear and free from any and all liens, claims, and demands of any kind.
3. The full compensation to be paid the Contractor by the Owner pursuant to the terms of this Contract shall be payable as provided in the Contract Documents.
4. This Contract consists of the following component parts, all of which are as fully a part of the Contract as herein set out verbatim, or if not attached, as if hereto attached:

Section 00110: Invitation for Bid  
Section 00130: Bid Schedule  
Section 00140: Bid Bond  
Section 00160: Pre-bid meeting  
Section 00210: Notice of Award  
Section 00310: Contract  
Section 00320: Performance Bond  
Section 00330: Payment Bond  
Section 00340: Certificate of Insurance  
Section 00350: Lien Waiver Release  
Section 00360: Debarment/Suspension Certification Statement  
Section 00410: Notice to Proceed  
Section 00420: Project Manager Notification  
Section 00430: Certificate of Substantial Completion  
Section 00440: Final Completion  
Section 00510: General Conditions of the Contract  
Section 00520: Subcontractors List  
Section 00620: Special Provisions

Addenda Number \_\_\_\_\_ Inclusive

Any modifications, including change orders, duly delivered after execution of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed as of the day and year first above written.

City of Greeley, Colorado

Contractor\_\_\_\_\_

Approved as to Substance

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
City Manager-Roy Otto

\_\_\_\_\_  
Printed Name

Reviewed as to Legal Form  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
City Attorney-Doug Marek

Certification of Contract  
Funds Availability

\_\_\_\_\_  
Director of Finance-Renee Wheeler

## SECTION 00320

### PERFORMANCE BOND

Bond No. \_\_\_\_\_

KNOWN ALL MEN BY THESE PRESENTS: that

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

hereinafter referred to as "the Surety", are held and firmly bound unto the CITY OF GREELEY, 1000 10th Street, Greeley, CO. 80631, a Municipal Corporation, hereinafter referred to as "the Owner" in the penal sum of \_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these present.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract Agreement with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of City of Greeley Project,

### **Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract Agreement during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty period, and if he shall satisfy all claims and demands incurred under such Contract Agreement, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PROVIDED, FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claims may be unsatisfied.

IN PRESENCE OF:

PRINCIPAL

_____	By: _____
_____	_____
_____	_____
(Corporate Seal)	(Address)

IN PRESENCE OF:

OTHER PARTNERS

_____	By: _____
_____	By: _____
	By: _____

IN PRESENCE OF:

SURETY

_____	By: _____
(Attorney-in-Fact)	
_____	_____
_____	_____
(SURETY SEAL)	(Address)

NOTE: Date of Bond must not be prior to date of Contract Agreement. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

## SECTION 00330

### PAYMENT BOND

Bond No. \_\_\_\_\_

KNOWN ALL MEN BY THESE PRESENT: that

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

hereinafter referred to as "the Surety", are held and firmly bound unto the CITY OF GREELEY, 1000 10th Street, Greeley, Co. 80631, a Municipal Corporation, hereinafter referred to as "the Owner", in the penal sum of

\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract Agreement with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the performance of

### **Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract Agreement, and any equipment and tools, consumed, rented or used in connection with the construction of such work and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PROVIDED, FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN PRESENCE OF:

PRINCIPAL

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Corporate Seal)

\_\_\_\_\_  
(Address)

IN PRESENCE OF:

OTHER PARTNERS

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

IN PRESENCE OF:

SURETY

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_

\_\_\_\_\_  
(SURETY SEAL)

\_\_\_\_\_  
(Address)

NOTE: Date of bond must not be prior to date of Contract Agreement. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

ACORD™

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/14/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>ABC Insurance Company</b> <b>P. O. Box 1234</b> <b>Anywhere, USA</b>	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	PRODUCER CUSTOMER ID #:		
INSURED  <b>Sample Certificate</b>	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : <b>Financial Rating of A</b>		
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE	<b>\$1,000,000</b>
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	<b>\$100,000</b>
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	<b>\$5,000</b>
							PERSONAL & ADV INJURY	<b>\$1,000,000</b>
							GENERAL AGGREGATE	<b>\$2,000,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	<b>\$2,000,000</b>
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							\$
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident)	<b>\$ 1,000,000</b>
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS							\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS							\$
								\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE	\$
	<b>EXCESS LIAB</b>						AGGREGATE	\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	<b>\$100,000</b>
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	<b>\$100,000</b>
							E.L. DISEASE - POLICY LIMIT	<b>\$500,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**City of Greeley is named as Additional Insured on General Liability. Waiver of subrogation is included on Work Compensation. This insurance is primary and noncontributory to insurance policies held by the City.**

## CERTIFICATE HOLDER

## CANCELLATION

<b>City of Greeley</b> <b>1000 10th St</b> <b>Greeley, CO 80631-3808</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



## SECTION 00350

### LIEN WAIVER RELEASE

TO: City of Greeley, Colorado (hereinafter referred to as "the OWNER".)

FROM: (hereinafter referred to as "the CONTRACTOR")

**PROJECT: Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

1. The CONTRACTOR does hereby release all Mechanic's Liens Rights, Miller Act Claim (40 USCA 270), Stop Notice, Equitable Liens and Labor and Material Bond Rights resulting from labor and/or materials, subcontract work, equipment or other work, rents, services or supplies heretofore furnished in and for the construction, design, improvement, alteration, additions to or repair of the above described project.
2. This release is given for and in consideration of the sum of \$            and other good and valuable consideration. If no dollar consideration is herein recited, it is acknowledged that other adequate consideration has been received by the CONTRACTOR for this release.
3. In further consideration of the payment made or to be made as above set forth, and to induce the OWNER to make said payment, the CONTRACTOR agrees to defend and hold harmless the OWNER, employees, agents and assigns from any claim or claims hereinafter made by the CONTRACTOR and/or its material suppliers, subcontractors or employees, servants, agents or assigns of such persons against the project. The CONTRACTOR agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.
4. It is acknowledged that the designation of the above project constitutes an adequate description of the property and improvements for which the CONTRACTOR has received consideration for this release.
5. It is further warranted and represented that all such claims against the CONTRACTOR or the CONTRACTOR's subcontractors and/or material suppliers have been paid or that arrangements, satisfactory to the OWNER and CONTRACTOR, have been made for such payments.
6. It is acknowledged that this release is for the benefit of and may be relied upon by the OWNER, the CONTRACTOR, and construction lender and the principal and surety on any labor and material bond for the project.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\*\*\*Strike when not applicable

**SECTION 00360**  
**GREELEY FISHING POND REMEDIAL ACTION PLAN**  
**IMPLEMENTATION & VEGETATIVE SOIL COVER CONSTRUCTION**  
**RFP #FL20-01-001**

Debarment/Suspension Certification Statement

The proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal, State, County, Municipal or any other department or agency thereof. The proposer certifies that it will provide immediate written notice to the City if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance.

DUNS # (Optional) \_\_\_\_\_

Name of Organization \_\_\_\_\_

Address \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## SECTION 00410

### NOTICE TO PROCEED

Month , 20

TO: NAME

PROJECT: **GREELEY FISHING POND REMEDIAL ACTION PLAN IMPLEMENTATION & VEGETATIVE SOIL COVER CONSTRUCTION - RFP #FL20-01-001**

To Whom It May Concern:

You are hereby notified to commence work on the above-referenced project in accordance with the Contract Agreement dated Month , 20 .

You are to complete this project by Month , 20

CITY OF GREELEY, COLORADO

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

## SECTION 00420

### PROJECT MANAGER NOTIFICATION

\_\_\_\_\_, 20\_\_\_\_

TO:

PROJECT: **Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

The Owner hereby designates Brian Ward as its Project Manager and authorizes this individual, under the authority of the Director of Public Works to make all necessary and proper decisions with reference to the project. Contract interpretations, change orders and other requests for clarification or instruction shall be directed to the Project Manager. The Director of Public Works shall be authorized to bind the Owner with respect to any decision made in accordance with the contract document.

CITY OF GREELEY, COLORADO

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **SECTION 00430**

### **CERTIFICATE OF SUBSTANTIAL COMPLETION**

**TO: CONTRACTOR**

**PROJECT: Greeley Fishing Pond Remedial Action Plan Implementation & Vegetative Soil Cover Construction - RFP #FL20-01-001**

Project or designated portion shall include: Describe Scope.

The work performed under this contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as Month , 20 .

The date of commencement of applicable warranties required by the Contract Documents is stipulated in Section 00440 - Certificate of Final Acceptance.

#### **DEFINITION OF DATE OF SUBSTANTIAL COMPLETION**

The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the Project Manager when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Documents.

A list of items to be completed or corrected, prepared by the Contractor and verified and amended by the Project Manager is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list is as stipulated in Section 00440 – Certificate of Final Acceptance.

The Owner shall operate and maintain the Work or portion of the Work described above from the Date of Substantial Completion and be responsible for all costs associated with the completed work excluding cost related to warrantee work.

Certificate of Substantial Completion

Page 2

The Contractor will complete or correct the Work on the list of items attached hereto within  
days from the above Date of Substantial Completion.

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Contractor

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Owner

(Note--Owner's and Contractor's legal and insurance counsel should review and determine insurance requirements and coverage; Contractor shall secure consent of surety company, if any.)

## SECTION 00440

### CERTIFICATE OF FINAL ACCEPTANCE

TO: **CONTRACTOR**

PROJECT NAME: **GREELEY FISHING POND REMEDIAL ACTION PLAN  
IMPLEMENTATION & VEGETATIVE SOIL COVER CONSTRUCTION  
RFP #FL20-01-001**

The work performed under this contract has been reviewed and found to meet the definition of final acceptance. This Certificate of Final Acceptance applies to the whole of the work.

The Date of Final Acceptance of the Project designated above is hereby established as: Month \_\_\_\_\_, 20\_\_\_\_ at 2:00 pm. This date is also the date of commencement of applicable warranties associated with the Project described above and as required by the Contract Documents.

#### DEFINITION OF DATE OF FINAL ACCEPTANCE

The Date of Final Acceptance of the Work is the date certified by the City of Greeley's Project Manager when the work is 100% complete, in accordance with the Contract Documents, as amended by change order(s), or as amended below:

Amendment to the Certificate of Final Completion (if any): Describe Amendments.

The Contractor and/or the City Of Greeley shall define any claims or requests for additional compensation above (or as attachments to this document).

Final Acceptance shall not be achieved until the Contractor provides the City Of Greeley with all contract specified Contractor and Sub-contractor close out documents including final lien waivers, releases, insurances, manuals, training, test results, warranties, and other documents required by the Contract Documents, as amended.

Upon issuance of the Certificate of Final Acceptance the Contractor may submit an application for payment requesting final payment for the entire Work. Liquidated damages (if any) will be assessed at this time.

Contractor's acceptance of the final payment shall constitute a waiver by the Contractor of all claims arising out of or relating to the Work; except as noted under 'Amendment to the Certificate of Final Acceptance' above.

Agreed:

_____ Contractor's Representative	_____ DATE	_____ Project Manager (COG)	_____ DATE
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## SECTION 00510

### CITY OF GREELEY GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION (REVISED NOVEMBER 2016)

#### ARTICLE 1 DEFINITIONS

- 1.1 **Bidder:** An architect, engineer, individual, firm, partnership, corporation or combination thereof, submitting a Bid for the Work.
- 1.2 **Change Notice:** A document issued to the Contractor specifying a proposed change to the Contract Documents. Unless otherwise expressly stated on the face of the Change Notice, a Change Notice is a proposal which may result in a Change Order.
- 1.3 **Change Order:** A document issued to the Contractor modifying the Contract.
- 1.4 **Construction Contract:** The Contract Documents, including the Contract for construction (hereinafter "the contract") executed by the Contractor and the Owner covering the performance of the Work including the furnishing of labor, superintendence, materials, tools and equipment as indicated in the Contract Documents.
- 1.5 **Contract Documents:** Documents applicable to and specific to the construction of an individual Project, including the Contract and all other documents executed by the Contractor and Owner covering the performance of the work including but not limited to Specifications, Insurance Requirements, Contract Drawings, Conditions of the Contract (General and Supplementary), Owner-Contractor Agreement, all Addenda, all change orders issued after execution of the Contract, Performance and Payment Bonds, and any other special provisions.
- 1.6 **Contract Drawings(Project Drawings):** Contract drawings, The plans, to include but not limited to plans, profiles, typical cross sections, general cross-sections, elevations, schedules, schematics, notes and details which show locations, character, dimensions, and details of the Work.
- 1.7 **Contractor:** The individual, firm, partnership, or corporation, or combination thereof, private, municipal, or public, including joint ventures, which, as an independent contractor, has entered into a contract with the Owner, who is referred to throughout the Contract Documents by singular number and masculine gender.
- 1.8 **Days:** Unless otherwise designated, days mean calendar days.
- 1.9 **Extra Work:** Work not provided for in the Contract as awarded but found to be essential to the satisfactory completion of the Contract, within its intended scope. Reimbursement for extra work is governed by Article 28, CHANGES, or Article 31, CONTRACTOR PROPOSALS.

- 1.10           **Field Order:** A written order issued to a contractor by the Owner, or Project Manager, effecting a minor change or clarification with instructions to perform work not included in the contract. The work will eventually become a Change Order. A field Order is an expedient process used in an emergency or need situation that in many cases does not involve an adjustment to the contract sum or an extension of the contract sum or an extension of the contract time.
- 1.11           **Final Acceptance:** The formal written acceptance by the Owner of the completed Work.
- 1.12           **Force Account:** A method of payment, other than lump sum or unit price, for Work ordered by Change Order or by written notice from the Owner. Reimbursement for force account work is governed by Article 36, FORCE ACCOUNT WORK.
- 1.13           **Furnishing:** Manufacturing, fabricating and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles and conveyances necessary or required for the completion of the Work.
- 1.14           **General Conditions (GC):** A section of the Contract Documents which specifies, in general, the contractual conditions.
- 1.15           **General Terms:** Directed, required, permitted, ordered, designated, selected, prescribed or words of like import shall be understood to mean the direction, requirement, permission, order, designation, selection or prescription of the Project Manager. Approved, satisfactory, equal, necessary or words of like import shall be understood to mean approved by, acceptable to, satisfactory to, equal, necessary in the opinion of the Project Manager.
- 1.16           **Indicated:** A term meaning as shown on the Contract Drawings, or as specified and detailed in the Contract Documents.
- 1.17           **Installation, Install, or Installing:** Completely assembling, erecting and connecting material, parts, components, appliances, supplies and related equipment specified or required for the completion of the Work.
- 1.18           **Limit of Work:** Boundary within which the Work, excepting utility and drainage work in Public Right Of Way and Easements, is to be performed.
- 1.19           **Notice to Proceed:** Written notice from the Owner to the Contractor to proceed with the Work.
- 1.20           **Notice of Termination:** Written notice from the Owner to the Contractor to stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- 1.21           **Owner:** The City of Greeley.
- 1.22           **Permanent Drainage Easement:** Area required to construct and maintain permanent drainage facilities for retention, release, and passage of surface water.
- 1.23           **Permanent Utility Easement:** Area required to construct and maintain utility facilities.

- 1.24           **Project:** That specific portion of the Work indicated in the Contract Documents.
- 1.25           **Project Manager:** The Owner's designated representative. The Project Manager has the authority to delegate portions of his responsibilities to others.
- 1.26           **Provide:** In reference to work to be performed by the Contractor, provide means furnish and install completely in place.
- 1.27           **Punch List:** Work determined to be incomplete or unacceptable at time of inspection for substantial completion.
- 1.28           **Samples:** Physical examples which illustrate materials, equipment, fixtures and workmanship which establish standards by which the Work will be judged.
- 1.29           **Schedule:** Acceptable schedules are BAR or GANTT Chart or CPM schedule.
- 1.30           **Shop Drawings:** Documents furnished by the Contractor to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, schedules, charts, brochures, tables and other data describing fabrication and installation of specific portions of the Work.
- 1.31           **Specifications:** A document applicable to construction contracts containing the Technical Provisions.
- 1.32           **Subcontractor:** Any person, firm or corporation, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, material or labor and materials, under this Contract.
- 1.33           **Special Provisions:** Provisions especially applicable to this Contract which invoke, modify and supplement the General Conditions which are included in the Contract Documents.
- 1.34           **Substantial Completion:** The state in the progress of Work when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents, so that Owner may access, occupy, use, and enjoy the Project, or designated portion thereof, for its intended purpose. Substantial Completion shall not occur until a temporary or permanent Certificate of Occupancy is issued and only minor punch list items remain for such Work.
- 1.35           **Technical Provisions:** Those provisions which specify the materials and execution of construction for work entering into the project.
- 1.36           **Work:** The construction, labor, materials, equipment, and contractual requirements as indicated in the Contract Documents, including alterations, amendments, or extensions thereto made by authorized changes.
- 1.37           **Work Site:** The area enclosed by the Limit of Work indicated in the Project Drawings and boundaries of local streets and public easements in which the Contractor is to perform work under the Contract. It shall also include areas obtained by the Contractor for use in connection with the Contract, when contiguous to the Limit of Work.

## **ARTICLE 2 INTERPRETATION**

2.1 The documents comprising the Contract Documents are complementary and indicate the construction and completion of the Work. Anything mentioned in the Contract Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Contract Specifications, shall be of like effect as if shown or mentioned in both.

2.2 Where "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the specifications or drawings accompanying this Contract unless stated otherwise.

2.3 References to Articles or Sections include sub articles or subsections under the Article Reference (for example, a reference to Article 2 is also a reference to 2.1 through 2.9, and references to paragraphs similarly include references to subparagraphs).

2.4 Referenced Standards: Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Invitation to Bid except where a particular issue is indicated.

2.5 Precedence of Contract Documents: Except as provided by Paragraph 2.1 of this Article, the Construction Contract governs over other Contract Documents, except that a Change Order governs over the Contract and previously issued Change Orders. The Contract Conditions govern over the General Conditions.

2.6 Explanations: Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Owner for such explanation provided as part of the Contract. Disputes over questions of fact which are not settled by agreement shall be decided by Owner. Such decision thereon will be final, subject to remedies under Article 35, DISPUTES.

2.7 Should there be any conflict, detailed instructions govern over general instructions, detail drawings have precedence over small scale drawings, and dimensions have precedence over scale.

2.8 Omissions and Misdescriptions: The Contractor shall carefully study and compare all drawings, specifications, Contract Documents and other instructions; shall verify all dimensions on the Contract Drawings before laying out the Work; shall notify the Project Manager of all errors, inconsistencies or omissions which he may discover; and obtain specific instructions in writing before proceeding with the Work. The Contractor shall not take advantage of apparent errors or omissions which may be found in the Contract Documents, but the Project Manager shall be entitled to make such corrections therein and interpretations thereof as he may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all errors in construction which could have been avoided by such examination and notification, subject to remedies under Article 35, Disputes.

**ARTICLE 3**  
**ENTITY OF CONTRACTOR**

3.1 If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**ARTICLE 4**  
**LIABILITY AND INDEMNIFICATION**

4.1 It is agreed that the Contractor assumes responsibility and liability for damages, loss or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any act, action, neglect, omission, or failure to act when under a duty to act on the part of the Contractor or any of his officers, agents, employees, or subcontractors in his or their performance of the Work. The Contractor shall indemnify and hold harmless the Government, the State, the Owner and the Project Manager and their members, officers, agents, or employees from claims, losses, damages, charges, costs, or expenses, including attorney's fees, whether direct or indirect, to which they or any of them may be put or subjected to by reason of any such loss or injury.

**ARTICLE 5**  
**PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES,  
AND IMPROVEMENTS AND LAND SURVEY MONUMENTS**

5.1 A Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed and which do not unreasonably interfere with the construction work and he shall replace in kind any vegetation, shrubs and grass damaged by him at his own expense.

5.2 The Contractor shall protect from damage all utilities, structures, or improvements on or near the site of the Work and shall repair or restore any damage to such utilities, structures, or improvements resulting from failure to comply with the requirements of the Contract or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, the Owner may have the necessary work performed and charge the cost thereof to the Contractor.

5.3 All land survey monuments shall be protected from any damage by any work and/or shall be replaced by a licensed land surveyor licensed in the state of Colorado at the contractor's expense before final acceptance is issued.

**ARTICLE 6**  
**CONTRACTUAL RELATIONSHIPS**

6.1 No contractual relationship will be recognized under the Contract other than the contractual relationship between the Owner and the Contractor.

## **ARTICLE 7 ASSIGNMENT**

7.1 The performance of the Work under the Contract shall not be assigned except upon written consent of the Owner. Consent will not be given to any proposed assignment which would relieve the Contractor or his surety of their responsibilities under the Contract. The Contractor shall not assign any monies due or to become due to him under the Contract without the previous written consent of the Owner.

## **ARTICLE 8 SUBCONTRACTORS**

8.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, not to exceed 3 days, shall furnish to the Owner and the Project Manager, in writing the names of the subcontractors, persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Project Manager will promptly reply to the Contractor in writing whether or not the Owner or the Project Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Project Manager to reply promptly shall constitute notice of no reasonable objections.

## **ARTICLE 9 CONDITIONS AFFECTING THE WORK**

9.1 The Contractor shall be responsible for taking steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions which can affect the Work or the cost thereof. Failure by the Contractor to do so will not relieve him from responsibility for successfully performing work without additional expense to the Owner. The Owner will not be responsible for any understanding or representations concerning conditions, unless such understanding or representations are expressly stated in the Contract.

## **ARTICLE 10 GRATUITIES AND CONFLICTS OF INTEREST**

10.1 The Owner may, by written notice to the Contractor terminate the right of the Contractor to proceed under this Contract if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor or any director, officer or employee of the Owner or its Project Manager with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract. The Owner's determination shall be final subject only to judicial review.

10.2 In the event this Contract is terminated for any reason, the Owner shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.

10.3 No member, officer or employee of the Owner or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. "Local public body" means the State, any political subdivision of the State, or any agency of the State or any political subdivision thereof.

10.4 The rights and remedies of the Owner provided in this article are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

## **ARTICLE 11 WARRANTY OF WORK**

11.1 Except where longer periods of warranty are indicated for certain items, the Contractor warrants work under the Contract to be free from faulty materials and workmanship for a period of not less than two years from date of Final Acceptance, which two year period shall be covered by the Performance Bond and Payment Bond as specified in this Contract. The Contractor shall immediately remedy, repair, or replace, without cost to the Owner and to the entire satisfaction of the Owner, defects, damages, or imperfections due to faulty materials or workmanship appearing in said work within said period of not less than two years. Remedied work shall carry the same warranty as the original work starting with the date of acceptance of the replacement or repair. Payment to the Contractor will not relieve him of any obligation under this Contract.

11.2 The Contractor, at no additional expense to the Owner, shall also remedy damage to equipment, the site, or the building or the contents thereof which is the result of any failure or defect in the Work, and restore any work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within a reasonable time but no longer than ten (10) days after receipt of notice thereof, the Owner will have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense.

11.3 Subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the Benefit of the Owner without the necessity of separate transfer or assignment thereof.

11.4 The rights and remedies of the Owner provided in this Article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.

## **ARTICLE 12 MATERIAL**

12.1 Unless otherwise indicated in this Contract, equipment, material and products incorporated in the Work covered by this Contract shall be new and of the grade specified in the Contract for the purpose intended. Unless otherwise specifically indicated, reference to equipment, material, product or patented process by trade names, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process which is equivalent to that named, subject to the requirements of Paragraph 12.2 of this Article.

12.2 Within the scope of his authority, the Project Manager shall be the sole judge of the quality and suitability of proposed alternative equipment, material, article or process. The burden of proving the quality and suitability of the alternative shall be upon the Contractor. Information required by the Project Manager in judging an alternative shall be submitted for approval by the Contractor at the Contractor's expense prior to installation.

12.3 Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. Redesign and changes in other parts of the Work shall be at the Contractor's expense.

12.4 No action relating to the approval of alternative materials will be taken by the Project Manager until the request for substitution is made in writing by the Contractor accompanied by complete data as to the quality and suitability of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work.

12.5 Disposal of material outside the Work Site: The Contractor shall make his own arrangements for legally disposing of waste and excess materials outside the Work Site and he shall pay costs therefore.

12.6 Property rights in materials: The Contractor shall have no property right in materials after they have been attached or affixed to the Work or the soil, or after payment has been made by the Owner to the Contractor for materials delivered to the site of the Work, or stored subject to or under the control of the Owner as provided in Article 24, PROGRESS PAYMENTS.

### **ARTICLE 13 WORKMANSHIP AND UNAUTHORIZED WORK**

13.1 Work under this Contract shall be performed in a skillful and workmanlike manner. The Project Manager may, in writing, require the Contractor to remove from the work any employee the Project Manager determines incompetent, careless or otherwise objectionable.

13.2 Unauthorized work: Work performed beyond the lines and grades shown on the Contract Drawings, approved Working and Shop Drawings and Extra work done without written authorization, will be considered as unauthorized work, and the Contractor will receive no compensation therefore. If required by the Owner, unauthorized work shall be remedied, removed, or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized work, the Owner may take courses of action set out in Paragraph 15.3 of Article 15, INSPECTION.

### **ARTICLE 14 SUPERINTENDENCE BY CONTRACTOR**

14.1 The Contractor shall give his personal superintendence to the Work or have a competent foreman or superintendent, hereinafter designated his authorized representative, satisfactory to the Owner, on the Work Site at all times during progress, with authority to act for him. There shall be provided at all times, a reasonable method of communication directly to the Contractor if the Owner experiences any problems or difficulties with the Superintendent.



## **ARTICLE 15 INSPECTION/TESTING**

15.1 Work (which term includes but is not restricted to materials, workmanship and manufacture and fabrication of components) will be subject to inspection and test by the Project Manager at all reasonable times and at all places prior to acceptance. Such inspection and test is for the sole benefit of the Owner and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the Contract Documents. No inspection or test by the Project Manager shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Owner after acceptance of the completed Work.

15.2 The Contractor shall, at his own expense, replace any material or correct any workmanship found not to conform to the contract requirements, unless the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises at his own expense.

15.3 If the Contractor does not promptly replace rejected material or correct the rejected workmanship, the Owner (1) may, by separate contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Article 38, TERMINATION FOR DEFAULT-- DAMAGES FOR DELAY--TIME EXTENSIONS.

15.4 The Contractor shall give the Project Manager ample notification of inspections and tests, and the Project Manager will perform, except as otherwise specifically provided, said inspections and tests in such manner as not to unnecessarily delay the work. The Owner will have the right to charge to the Contractor any additional cost of inspection or test or when reinspection or retest is necessitated by prior rejection.

15.5 Should it be considered necessary, before acceptance of the entire work, to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and material therefore. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment will be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction. If completion for the work has been delayed thereby, he will, in addition, be granted an equitable extension of time.

15.6 The Project Manager shall have access to the work during its construction. Work done and materials provided will be subject to the Project Manager's on-site and off-site inspection and approval. When work is to be performed during hours other than during his normal schedule, the Contractor shall so advise the Project Manager not less than 24 hours in advance. The Contractor shall provide access to the work for authorized representatives of the Owner.

15.7 The Project Manager's inspection and approval of work or materials shall not relieve the Contractor of any of his obligations to fulfill the requirements of the Contract Documents. Work and materials not meeting the requirements of the Contract shall not be incorporated in the Work. Unsuitable or substandard work or materials may be rejected by the Project Manager, notwithstanding that such work or materials may have been previously inspected by the Project Manager, or that payment therefore has been included in a progress payment.

## **ARTICLE 16 PERMITS AND COMPLIANCE WITH LAWS**

16.1 The Contractor shall without additional expense to the Owner be responsible for obtaining necessary licenses and permits and for complying with applicable Federal, State, County and Municipal laws, codes and regulations in connection with the commencement of the work. The Contractor is required to supply the Project Manager with complete and final copies of license and permits including final inspection documentation. The Contractor shall be required to obtain permits at his own expense. The Contractor shall protect, indemnify and hold harmless the Owner and the Project Manager and their members, officers, agents and employees against claims and liabilities arising from or based on the violation of requirements of law or permits whether by the Contractor, his employees, agents or subcontractors.

## **ARTICLE 17 RIGHTS IN LAND IMPROVEMENT**

17.1 The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the work site for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the Owner and any owner, former owner or tenant of such land, structure or building. The Contractor shall not occupy Owner property outside the work site without obtaining prior written approval from the Owner.

## **ARTICLE 18 DAMAGE TO THE WORK AND RESPONSIBILITY FOR MATERIALS**

18.1 The Contractor shall be responsible for materials delivered and work performed until completion and final acceptance of the entire construction thereof.

18.2 The Contractor shall bear the risk of injury, loss or damage to any and all parts of the work for whatever cause, whether arising from the execution or from the non-execution of work. The Contractor shall rebuild, repair or restore work and materials which have been damaged or destroyed from any cause before completion and acceptance of the work and shall bear the expense thereof. The Contractor shall provide security and drainage and erect temporary structures as necessary to protect the work and materials from damage.

18.3 The Contractor shall be responsible for materials not delivered to the site for which any progress payment has been made to the same extent as if the materials were so delivered.

## **ARTICLE 19 EMERGENCIES**

19.1 In an emergency affecting the safety of life, the work, or adjacent property, the Contractor shall notify the Project Manager as early as possible that an emergency exists. In the meantime, without special instruction from the Project Manager as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the Project Manager may issue instruction, which the Contractor shall follow. The amount of compensation to which Contractor is entitled on account of emergency work will be determined in accordance with Article 28, CHANGES.

## **ARTICLE 20 NOTICE TO PROCEED**

20.1 The Owner will issue a Notice to Proceed to the Contractor within 15 days after the Contractor has executed the Contract and has delivered the specified bonds and Certificates of Insurance as required by the Owner. Except as specifically authorized in writing by the Owner, the Contractor is not authorized to perform work under the Contract until the effective date of the Notice to Proceed. Within 10 days after the effective date of such Notice to Proceed, the Contractor shall commence work and shall diligently prosecute the Work to completion within the time limits specified. These time periods may be modified by mutual written agreement of both the Owner and Contractor.

## **ARTICLE 21 PROGRESS SCHEDULE AND REQUIREMENTS FOR MAINTAINING PROGRESS**

21.1 The Contractor shall, at the pre-construction meeting, prepare and submit to the Project Manager for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall update the chart with the actual progress monthly or at such intervals as directed by the Project Manager, and shall immediately deliver three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Project Manager may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

21.2 The Contractor shall prosecute the work in accordance with the latest approved Progress Schedule. In the event, that the progress of items along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract. Additional costs resulting therefrom will be borne by the Contractor. The Contractor shall make such changes when his progress at any check period does not meet at least one of the following two tests:

21.2.1 The percentage of dollar value of completed work with respect to the total amount of the Contract is within ten percentage points of the percentage of the Contract time elapsed, or;

21.2.2 The percentage of dollar value of completed work is within ten percentage points of the dollar value which should have been performed according to the Contractors own network analysis previously approved by the Project Manager.

21.3 Failure of the Contractor to comply with the requirements under this provision will be grounds for determination that the Contractor is not prosecuting the work with such diligence as will ensure completion within the time of completion specified in this Contract. Upon such determination, the Owner may terminate the Contractor's right to proceed with the work, or any separate part thereof, in accordance with Article 38, TERMINATION FOR DEFAULT--DAMAGES FOR DELAY--TIME EXTENSIONS of these General Conditions.

## **ARTICLE 22 SUSPENSION OF WORK**

22.1 The Owner reserves the right to suspend, delay or interrupt execution of the whole or any part of the work for such period of time as he may determine to be appropriate for his convenience.

22.2 If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner in the administration of this Contract or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

22.3 No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Owner in writing of the act of failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

## **ARTICLE 23 FINAL INSPECTION AND ACCEPTANCE**

23.1 Final inspection: When the Contractor notifies the Project Manager in writing that the work has been completed, the Owner will make the final inspection for the purpose of ascertaining that the work has been completed in accordance with the requirements of the Contract Documents.

23.2 Acceptance of the work: When the Owner has made the final inspection and has determined that the work has been completed in accordance with the Contract Documents, the Owner will accept the work. Immediately upon and after Final Acceptance, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole. The Contractor will be relieved of his responsibility for injury to persons or property or damage to the work which occurs after Final Acceptance, except that the Contractor will not be relieved of his responsibility for injury to persons or property arising from his duties and obligations under Article 4, LIABILITY AND INDEMNIFICATION.

23.3 Final Acceptance shall be final and conclusive, and no further performance of work shall be required except with regards to latent defects, fraud or such gross mistakes as may amount to fraud, or with regard to the Owner's rights under any warranty or guarantee. All punch list items must be completed and building permits provided to Owner before final acceptance is issued.

23.4 Date of Substantial Completion for all Work shall be within the number of calendar days bid by the Contractor on the Bid proposal.

23.5 Date of Final Completion shall be the date specified on the Certificate of Final Completion.

## **ARTICLE 24 PROGRESS PAYMENTS**

24.1 The Owner will make progress payments monthly as the work proceeds, on estimates approved by the Project Manager. Payment will be made within 15 days after progress estimates are approved by the Project Manager and Department Head. On request of the Project Manager, the Contractor shall furnish a detailed estimate of the total contract price each showing the amount included therein for each principal category of the work, to provide a basis for determining the amount of progress payments. In the preparation of estimates, the Owner, at its sole discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration which is to be submitted at the pre-construction meeting.

24.2 In making such progress payments, five percent of the estimated amount will be retained until Final Acceptance of the Contract work; in addition, the Owner shall retain from all Progress payments an amount equal to all statutory claims filed against the Contractor. Also, whenever the work is substantially complete, the Owner if it considers the amount retained to be in excess of the amount adequate for its protection, may release to the Contractor all or a portion of such excess amount. Substantial completion as used in this Paragraph 24.2 shall mean the following: Substantial completion of the work or a portion thereof shall be when, as determined by both the Project Manager and the Owner, the construction is sufficiently completed in accordance with the Contract Documents and any modification thereto as provided in the Contract to permit the Owner to occupy the work or a portion of the work for the use which it is intended.

24.3 Material and work covered by progress payments shall become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for material and work upon which payments have been made, the restoration of damaged work or as waiving the right of the Owner to require the fulfillment of the terms of the Contract.

## **ARTICLE 25 PAYMENT TO SUBCONTRACTORS**

25.1 The Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontract. Prior to final payment an unconditional lien waiver release form will be required by the Owner.

## **ARTICLE 26 PAYMENT OF TAXES**

26.1 The price or prices for the work will include full compensation for taxes that the Contractor is or may be required to pay. The Contractor shall bear the risk of any added or increased taxes occurring during the prosecution of the work. A change in taxes shall under no circumstances entitle the Contractor to an adjustment under the Contract.

26.2 The Contractor's attention is directed to the fact that this project is exempt from payment of City of Greeley Sales and Use taxes, and such taxes must not be included in the amount of bid.

26.3 The Contractor shall pay all sales and use taxes required to be paid, shall maintain such records in respect of his work, which shall be separate and distinct from all other records maintained by the Contractor and shall be available for inspection by the Owner at any and all reasonable times, and shall furnish the Owner with such data, as may be necessary to enable the Owner to obtain any refunds of such taxes which may be available to the Owner under the laws, ordinances, rules or regulations applicable to such taxes. The Contractor shall require each of his subcontractors to pay all sales and use taxes required to be paid and to maintain such records and furnish the Contractor with such data as may be necessary to enable the Owner to obtain a refund of the taxes paid by such subcontractors.

## **ARTICLE 27 FINAL PAYMENT**

27.1 After the Work has been accepted by the Owner, subject to the provisions of Article 11, WARRANTY OF WORK and Article 23, FINAL INSPECTION AND ACCEPTANCE of these General Conditions, a final payment due the Contractor under this Contract shall be paid upon the presentation of properly executed voucher and after the Contractor shall have furnished the Owner with a release of all claims against the Owner arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

27.2 If any mechanic's or material man's lien or notice of claim of such lien is filed or recorded against the project for labor, materials, supplies or equipment claimed to have been furnished to or incorporated into the Work, or for other alleged contribution thereto, the Owner will have the right to retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this Article or under other provisions of the Contract, an amount equal to such lien or liens claimed.

27.3 Further, the Owner will have the right to retain from final payment an amount equal to all liquidated damages claimed by the Owner.

27.4 Retainages held by the Owner for any state or federal statutory claim arising out of the project will be held by the Owner in addition to all retainages held under the provisions of the Contract.

## **ARTICLE 28 CHANGES**

28.1 The Owner may, at any time, without notice to the sureties, by written notice or order designated or indicated to be a Change Notice or Change Order, make any change in the work within the general scope of the Contract in accordance with all of the Owner's processes and procedures whether or not set forth herein, including but not limited to changes:

28.1.1 In the Contract (including drawings and designs);

28.1.2 In the method or manner of performance of the work;

28.1.3 In Owner furnished facilities, equipment, materials, services, or site; or

28.1.4 Directing acceleration in performance of the work.

28.2 Any other order (which terms as used in Paragraph 28.2 of this Article shall include direction, instruction, interpretation, or determination) from the Project Manager, which causes any change, shall be treated as a Change Notice under this Article provided that the Contractor gives the Project Manager written notice stating the date, circumstances and source of the order, and that the Contractor regards the order as a Change Notice. The Contractor shall notify the Project Manager when he receives direction, instruction, interpretation or determination from any source which may cause any change in the work. Such notification shall be given to the Project Manager before the Contractor acts on said direction, instruction, interpretation or determination.

28.3 Except as herein provided, no order, statement, or conduct of the Architect/ Project Manager or any other person shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.

28.4 If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by an order, an equitable adjustment will be made and the Contract modified accordingly by a written Change Order; provided, however, that except for claims based on errors in the Contract Documents, no claim for change under Paragraph 28.2 of this Article will be allowed for costs incurred more than 20 days before the Contractor gives written notice as herein required; and provided that in the case of errors in the Contract Documents for which the Owner is responsible, the adjustment will include increased cost, reasonably incurred by the Contractor in attempting to comply with such errors in the Contract Documents. No claim shall be made for the type of errors in the Contract Documents which are set forth in Article 2, INTERPRETATION.

28.5 If the Contractor intends to assert a claim for an equitable adjustment under this Article, he shall, within 30 days after receipt of a written Change Order under Paragraph 28.1 of this Article or the furnishing of a written notice under Paragraph 28.2 of this Article, submit to the Project Manager a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended in writing by the Owner. The statement of claim hereunder may be included in the notice under Paragraph 28.2 of this Article.

28.6 No claim by the Contractor for an equitable adjustment hereunder will be allowed unless asserted as described in Paragraphs 28.4 and 28.5 above.

28.7 Payment will not be made under the provisions of this Article for such work or materials which are so required to be done or furnished in or about or for the performance of the Work and which are not mentioned, specified or indicated or otherwise provided for in this Contract or in the Contract Documents so far as such work or materials may be, in the opinion of the Project Manager, susceptible of classification under or reasonably inferred to be included in the Bid Items of the Bid Form.

28.8 In case the Contractor is ordered to perform work under this Article for which payments are not determined under Paragraph 28.7 of this Article, which in the opinion of the Owner it is impracticable to have performed by the Contractor's own employees, the Contractor will, subject to the approval of the Owner, be paid the actual cost to him of such work and, in addition thereto, a negotiated amount to cover the Contractor's superintendence, administration and other overhead expenses. The terms and conditions of any subcontract which the Contractor may propose to enter into in connection with work under the provision of this Article shall be subject to the written approval of the Project Manager before such subcontract is made. The contractor shall be responsible for the work of the subcontractors and shall be liable therefore as if he had performed the work directly.

28.9 In cases other than those described in Paragraphs 28.7 and 28.8 above, the Owner and the Contractor (on his own behalf and on behalf of his subcontractors) shall endeavor to negotiate a reasonable contract price and line adjustment in a Change Order on terms appropriate to the changed work. The Contractor will be required to submit a sufficiently detailed price proposal supported with sufficient documentation that (1) the Owner can determine that the proposal reflects all impacts on the Contract from work additions, deletions and modifications shown in the Change Notice being priced, (2) the proposed prices are set out in such a way that their reasonableness can be evaluated against prices based on adequate price competition, bid unit prices, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, recognized published price lists and indices, independently developed cost estimates and other appropriate price comparisons, and (3) contract provisions relating to Contract changes costing over \$100,000.00 are complied with. If any prices or other aspects are conditional, such as on firm orders being made by a certain date or the occurrence or nonoccurrence of an event, the Contractor shall identify these aspects in his proposal. A negotiated Change Order shall set out prices, scheduling requirements, time extensions and all costs of any nature arising out of the issuance of a Change Notice except for those cost and time aspects explicitly reserved on the face of the Change Order. Except for these explicit reservations, the execution of a Change Order by both parties will be deemed accord and satisfaction of all claims of any nature arising from the issuance of the Change Notice negotiated.

28.10 In the event the Contractor and the Owner are unable to agree upon the Contractor's entitlement to an equitable adjustment or upon the amount thereof, or in the event that it is in the best interest of the Owner to have the Work proceed pending negotiation of amount of an equitable adjustment, the Owner may direct the Contractor to perform the Work in accordance with the Owner order, direction, instruction, interpretation, or determination, with any Contract price adjustments and progress payments for the Work to be determined on a Force Account basis in accordance with Article 36. The Contractor shall continue diligently to perform the Contract in accordance with the Owner's order, direction, instruction, interpretation, or determination during negotiations with respect to the Contractor's entitlement to an equitable adjustment hereunder or to the amount of any Contract price adjustment or time extension. The Contractor and the Owner may agree on certain aspects of an equitable adjustment and take those aspects out of operation of Force Account provisions. In the



event a mutually agreeable equitable adjustment cannot be made, the Contractor shall continue diligently to perform the orders as he proceeds with his remedies under Article 35, DISPUTES, and shall continue to receive compensation on a Force Account basis.

28.11 For contract changes, the Owner, State and Government or their representative shall have the audit and inspection rights as described below:

28.11.1 Where the agreed payment method for any contract changes is to be by cost reimbursement, time and material, labor hours or any combination thereof, the Contractor shall maintain and the Owner or its representatives shall have the right to examine books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the contract changes under this sub article.

28.11.2 Contract changes exceeding \$100,000.00 in cost: For submitted cost and pricing data in connection with pricing a contract modification referred to in this sub article, unless such pricing is based on bid unit prices, adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, the Owner or his representatives and the Comptroller General of the United States and his representatives who are employees of the United States shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation of or performance under the contract Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

28.11.3 Contract changes exceeding \$10,000.00 but not \$100,000.00 in cost: The Owner or his representatives prior to the execution of any contract Change Order in this sub article or for a period of twelve months after execution shall, unless such pricing is based on bid unit prices, adequate price competition, established catalog of market prices or commercial items sold in substantial quantities to the public, or prices set by law or regulation, have the right to examine all books, records, documents, and other data of the Contractor relating to the negotiation and contract Change Order for the purpose of evaluating the accuracy, completeness, and currency of the data is submitted upon which negotiation is or has been based. To the extent the examination reveals inaccurate, incomplete or noncurrent data, the Project Manager may renegotiate the contract Change Order price based on such data.

28.11.4 Contract changes of less than \$10,000.00 in cost: The Owner may require from the Contractor appropriate documentation to support the prices being negotiated for contract changes under this sub article, and may refuse to complete negotiations until satisfactory documentation is submitted.

28.11.5 Availability: The materials described in Paragraphs 28.11.1 and 28.11.2 above shall be available at the office of the Contractor at all reasonable times for inspection, audit or reproduction until three years from the date of final payment under this Contract and for records which relate to Article 35, DISPUTES, or litigations or the settlement of claims arising out of the negotiation or the performance of contract changes over 100,000.00, records shall be made available until such litigations or claims have been resolved.

28.11.6 The Contractor shall insert a clause containing all the provisions in this Paragraph 28.11, including this subparagraph 28.11.6, in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and Owner.

28.11.7 For the purposes of Paragraph 28.11 of this Article, costs shall include liquidated damages which would be assessed if extension(s) of time were not granted by contract Change Order.

28.11.8 The requirements of this audits and records article are in addition to other audit, inspection and record keeping provisions elsewhere in the Contract Documents.

28.12 Changes involving aggregate increases and decreases in excess of \$100,000.00 shall be subject to the following:

28.12.1 A change involves aggregate increases and decreases in excess of \$100,000.00 if the total value of work affected, without regard to the arithmetic sign, exceeds this amount; for example, a change order adding work in the amount of \$75,000.00 and deleting work in the amount of \$50,000.00 will be considered to involve aggregate increases and decreases of \$125,000.00.

28.12.2 The Contractor shall submit in support of all items not based upon unit prices or lump sum prices contained in the Contract or upon the established prices at which commercial items are sold in substantial quantities to the public, statements by his vendors that the prices charged the Contractor are not greater than the prices charged by the respective vendors to their most favored customers for the same items in similar quantities.

28.12.3 Price reductions for Defective Cost or Pricing Data--Pricing Adjustments: If any price, including profit and fee, negotiated in connection with any price adjustment was increased by any significant sums because:

28.12.3.1 The Contractor furnished cost or pricing data which were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

28.12.3.2 A subcontractor, pursuant to Paragraph 28.13 of this Article entitled Subcontractor Cost or Pricing Data--Pricing Adjustments or any subcontract provision therein required, furnished costs or pricing data which were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data;

28.12.3.3 The subcontractor or his prospective subcontractor furnished cost or pricing data which were required to be complete, accurate, and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which were not complete, accurate, and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

28.12.3.4 The Contractor or a subcontractor or his prospective subcontractor furnished any data, not within subparagraphs 28.12.3.1, 28.12.3.2, or 28.12.3.3 above, which were not complete, accurate, and current as submitted, the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. Any reduction in the Contract Price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead

and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data.

**28.13 Subcontract Cost of Pricing Data-- Pricing Adjustment:**

**28.13.1** When negotiating a change involving increases or decreases in excess of \$100,000.00, the Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances. Prior to award of any cost-reimbursement type, incentive or price redeterminable subcontract;

**28.13.1.2** Prior to the award of any subcontract the price of which is expected to exceed \$100,000.00;

**28.13.1.3** Prior to the pricing of any subcontract change modifications for which the price is expected to exceed \$100,000.00, except in the case of 28.13.1.2 and 28.13.1.3 where the price is based on adequate price competition, established catalog or market prices, commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

**28.13.2** The Contractor shall require subcontractors to certify to the best of their knowledge and belief that the cost and pricing data submitted under subparagraph 28.13.1 of this Article are accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract Change Order.

**28.13.3** The Contractor shall insert the substance of Paragraph 28.13 of this Article, including this subparagraph 28.13.3, in each subcontract hereunder which exceeds \$100,000.00.

**ARTICLE 29  
PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

**29.1** The Contractor shall furnish a Performance Bond in the amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of this Contract and also a Labor and Material Payment Bond in an amount not less than one hundred percent (100%) of the Contract Sum or in a penal sum not less than that prescribed by State, or local law, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Labor and Material Payment Bond may be in one or in separate instruments in accordance with local law and shall be delivered to the Owner not later than the date of execution of the Contract.

**29.2** Performance Bonds, Labor and Material Payment Bonds and other such sureties shall provide that the surety and the Contractor are both jointly and severally liable and obligated under respective Bond or other surety agreement and shall incorporate acknowledge of applicable provisions of state law into all documents furnished in connection with the project.

**ARTICLE 30  
DIFFERING SITE CONDITIONS**

**30.1** The Contractor shall within 10 days of actual or constructive notice of a differing site condition, promptly, and before such conditions are disturbed, notify the Project Manager in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in

the Contract Documents, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The Project Manager will promptly investigate the conditions, and if such conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment may be made subject to Owner's approval and the Contract modified in writing accordingly.

30.2 No claim of the Contractor under this Article will be allowed unless the Contractor has given the notice required in Paragraph 30.1 of this Article.

30.3 No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract.

### **ARTICLE 31 CONTRACTOR PROPOSALS**

31.1 The Contractor may at any time submit to the Project Manager for his review proposed modifications to the Contract Documents, supported by a cost/price proposal. Upon acceptance of the proposed modifications by the Owner, a Change Order will be issued. Denial of the proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities. An equitable adjustment in the form of a contract price reduction will be made if the change results in a reduction of the cost of performance and the Contractor will not be entitled to share in said savings unless the proposal is made under Paragraph 31.2 of this Article. Except as provided in Paragraph 31.2 of this Article, the Contractor will not be compensated for any direct, incidental or collateral benefits or savings the Owner receives as a result of the proposal.

31.2 Value Engineering Change Proposals: The Contractor may submit to the Project Manager one or more cost reduction proposals for changing the Contract requirements. The Proposals shall be based upon a sound study made by the Contractor indicating that the proposal:

31.2.1 Will result in a net reduction in the Total Contract amount;

31.2.2 Will not impair any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized features.

31.2.3 Will not require an unacceptable extension of the contract completion time; and

31.2.4 Will require a change in the Contract Documents and such change is not already under consideration by the Owner.

31.3 The Owner may accept in whole or in part any proposal submitted pursuant to the previous Paragraph 31.2 by issuing a Change Order which will identify the proposal on which it is based. The Change Order will provide for an equitable adjustment in the Contract Price and will revise any other affected provisions of the Contract Documents. The equitable adjustment in the Contract price will be established by determining the net savings resulting from the accepted change. The net savings resulting from the change will be shared between the Contractor and the Owner on the basis of 50 percent for the Contractor and 50 percent for the Owner and will be limited to this

contract for any one Value Engineering Change Proposal. Net savings will be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal (including any amount attributable to a subcontractor) and the estimated amount of increased costs to the Owner resulting from the change, such as evaluation, implementation, inspection, related items, and the Owner-furnished material. Estimated gross savings will include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price will be reduced by the sum of the Owner's costs and share of the net savings. For the purpose of this Article, the applicable provisions of Article 28, CHANGES, shall be used to determine the equitable adjustment to the Contract price.

31.4 The Owner will not be liable for delay in acting upon, or for failure to act upon, any proposal submitted pursuant to Paragraph 31.2 of this Article. The decision of the Owner as to the Acceptance or rejection of any such proposal under the Contract will be final. The submission of a proposal by the Contractor will not in itself affect the rights or obligations of either party under the Contract.

31.5 The Contractor shall have the right to withdraw part or all of any proposal he may make under Paragraph 31.2 of this Article at any time prior to acceptance by the Owner. Such withdrawal shall be made in writing to the Project Manager. Each such proposal shall remain valid for a period of 60 days from the date submitted. If the Contractor wishes to withdraw the proposal prior to the expiration of the 60-day period, he will be liable for the cost incurred by the Owner in reviewing the proposal.

31.6 The Contractor shall specifically identify any proposals under Paragraph 31.2 of this Article with the heading "Value Engineering Change Proposal", or the proposal will be considered as made under Paragraph 31.1 of this Article.

31.7 The Contractor, in connection with each proposal he makes for a Contract Change Notice under this Article shall furnish the following information:

31.7.1 a description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages of each, justification when a function or characteristic of an item is being altered, and the effect of the change on the performance of the end item;

31.7.2 an analysis and itemization of the requirements of the Contract which must be changed if the Value Engineering Change Proposal is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);

31.7.3 a separate detailed cost estimate for both the existing Contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the Value Engineering Change Proposal taking into account the costs of development and implementation by the Contractor;

31.7.4 a prediction of any effects the proposed change would have on collateral costs to the Owner such Government-furnished property costs, costs of related items, and costs of maintenance and operation;

31.7.5 a statement of the time by which a contract modification accepting the Value Engineering Change Proposal must be issued so as to obtain the maximum cost reduction, noting any effect on the contract completion time or delivery schedule; and

31.7.6 identification of any previous submission of the Value Engineering Change Proposal to the Owner, including the dates submitted, the numbers of contracts involved, and the previous actions by the Owner, if known.

## **ARTICLE 32 EXTENSION OF TIME**

32.1 In addition to the provisions stated in Article 38, the Contractor will be granted an extension of time and will not be assessed liquidated damages for any portion of the delay in completion of the Work, performed under the latest approved progress schedule, arising from acts of God, war, fires, floods, epidemics, quarantine restrictions, freight embargoes, or weather more severe than the norm, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has notified the Project Manager in writing of the cause or causes of delay within five days from the beginning of any such delay. Within 15 days after the end of the delay, the Contractor shall furnish the Project Manager with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures to be taken to prevent or minimize the delay. Failure to submit such information will be sufficient cause for denying the delay claims. The Owner will ascertain the facts and the extent of the delay, and its findings thereon will be final and conclusive to provisions under Article 35, DISPUTES. The extension of time granted for these reasons shall not be the basis for additional compensation for any costs incurred during the time of delay.

32.1.1 Every effort shall be made by the Contractor to complete the project within the "Contract Time". The "Contract Time" anticipates "Normal" weather and climate. The Contractor's schedule must anticipate normal adverse weather delays on all weather dependent activities. The following specifies the procedure for determining time extensions for unusually severe weather. Listed below are the anticipated numbers of calendar days lost to normal adverse weather for each month.

### **Monthly Anticipated Calendar Days Lost to Adverse Weather Conditions**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(7)	(4)	(4)	(4)	(6)	(3)	(4)	(2)	(3)	(3)	(2)	(5)

The above schedule of anticipated adverse weather days will constitute the base line for monthly (or portion thereof) weather time evaluations. It is assumed that the work will be carried out Mondays through Fridays (holidays excepted) unless and approved construction schedule or written authorization from the Owner indicates otherwise.

An actual adverse weather day must prevent work for 50 percent or more of the Contractor's workday. When the Contractor anticipates documenting a weather day, he/she shall first notify the Project Manager or his/her designee observing the construction to determine whether or not work can proceed or if work is delayed due to adverse weather or the effects thereof. If in agreement, the Contractor shall formally request a weather day in writing to the Owner's Project Manager or his/her designee. The Contractor shall also notify the Owner's Project Manager in writing or his/her

designee of any disagreement as to whether or not work could have proceeded on a given date within 2 calendar days of that date. The final decision regarding an adverse weather day will be made by the Project Manager or his/her designee.

The number of workdays delayed due to adverse weather or the effects thereof will then be converted to Calendar Days. Weekends and holidays will only count as calendar day delays if a workday delayed due to adverse weather is counted before and after the weekend/holiday. The number of calendar days of delay due to adverse weather or the impact thereof will then be compared to the monthly adverse weather schedule above. The Contract time period will then be increased by change order for the number of calendar days that are in excess of the above schedule and a new Contract Completion day and date will be set.

32.1.2 An extension of time will not be granted for a delay caused by a shortage of materials, except Owner-furnished materials, unless the Contractor furnishes to the Project Manager documentary proof that he has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the Work which could not be compensated for by revising the sequence of his operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at reasonable, practical, or economical costs, unless it is shown to satisfaction of the Project Manager that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

32.2 A Change Order will be furnished to the Contractor within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, and the new date for completion of the Work or specified portions of the Work.

32.3 See also Article 38, TERMINATION FOR DEFAULT--DAMAGES FOR DELAY--TIME EXTENSIONS.

### **ARTICLE 33 NOTICE OF POTENTIAL CLAIM**

33.1 The Contractor will not be entitled to additional compensation otherwise payable for an act or failure to act by the Owner, the happening of any event or occurrence, or any other cause, unless he shall have given the Project Manager a written notice of potential claim therefore as specified in this Article.

33.2 The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. If based on an act or failure to act by the Owner, such notice shall be given to the Project Manager prior to the time that the Contractor has started performance of work giving rise to the potential claim for additional compensation. Notice shall be given within five days after the happening of the event or occurrence giving rise to the potential claim.

33.3 It is the intention of this Article that differences between the parties arising under and by virtue of the contract shall be brought to the attention of the Project Manager at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken.

33.4 The notice requirements of this Article are in addition to those required in other Articles of the General Conditions.

## **ARTICLE 34 SUBMITTAL OF CLAIMS**

34.1 Claims filed by the Contractor shall contain sufficient detail to enable the Owner to ascertain the basis and amount of said claims. The Owner will review and evaluate the Contractor's claims. It will be the responsibility of the Contractor to furnish when requested by the Project Manager such further information and details as may be required to determine the facts or contention involved in his claims. Failure to submit such information and details will be sufficient cause for denying the Contractor's claims.

34.2 Each claim the Contractor may make for equitable adjustment on account of delay for any cause shall be accompanied by a progress schedule reflecting the effects of the delay and proposals to minimize these effects. If no progress schedule has been submitted to the Project Manager reflecting conditions prior to the delay for which relief is sought, then a progress schedule so reflecting these conditions shall be prepared and submitted with the claim.

34.3 Depending upon the grounds for relief and the nature of relief sought, additional submittals and conditions upon submitting claims may be required elsewhere in these General Conditions.

34.4 In no event shall claims be made after final payment is made under Article 27, FINAL PAYMENT, of these General Conditions.

34.5 Inasmuch as notice of potential claim requirements of Article 33, NOTICE OF POTENTIAL CLAIM, are intended to enable the Project Manager to investigate while facts are fresh and to take action to minimize or avoid a claim which might be filed thereafter, the Contractor's failure to make the required notice on time is likely to disadvantage the Owner. Therefore no claim for which a notice of potential claim is required will be considered unless the Contractor has complied with the notice of Article 33, NOTICE OF POTENTIAL CLAIM.

## **ARTICLE 35 DISPUTES**

35.1 General: Notwithstanding any other provisions of this Contract, disputes and disagreements by and between the Owner and the Contractor shall be resolved through progressive, sequential process of negotiation, mediation, and in certain cases, arbitration. For contracts which are for \$250,000 or less, amounts in dispute which are less than \$10,000 shall not progress beyond negotiation and shall ultimately be decided by the Owner if not by mutual agreement. For contracts which are for more than \$250,000, amounts in dispute which are less than \$25,000 should not progress beyond negotiation. For all contracts, amounts in dispute greater than those amounts set forth above, but less than \$100,000 shall be resolved through a sequential process of negotiation, mediation, and binding arbitration. Amounts in dispute which are \$100,000 or more shall be resolved through a sequential process of negotiation, mediation, and thence either arbitration or litigation.

35.2 Negotiation: In the event of disputes, unsettled claims, questions or disagreements between the contractor and the City relating to or arising out of the provisions of this Contract, the representatives of those parties shall meet promptly in recognition of mutual interests and in a good



faith effort to resolve the dispute. Either the Contractor or the City shall arrange for this meeting at a time and place within the City of Greeley, mutually acceptable to both parties, within fifteen (15) days of notification of the dispute, unsettled claim, question, or disagreement between the parties. Seven (7) days prior to the meeting, the initiating party shall deliver to the other party, a written and complete summary of the evidence and arguments substantiating its claim. If the parties do not reach a solution within thirty (30) days after said initial meeting, then upon notice of either party to the other, the dispute, claim, question, or difference, may be referred to a mediator pursuant to Section 35.3. The parties can extend the negotiation period by mutual written agreement.

**35.3 Mediation:** If the dispute, claim, question, or difference is not resolved by negotiation within thirty (30) days after the initial meeting between the parties or within the extended period agreed upon, the parties agree to next request that the American Arbitration Association provide a mediator to assist the Owner and Contractor in resolving the dispute, claim, question, or difference. The rules of mediation shall be the Construction Industry Mediation Rules of the American Arbitration Association. A different mediation/dispute resolution agency may be selected for mediation upon the mutual written agreement between the parties. The dispute resolution agency shall select a qualified mediator who shall have a background in construction. The selected mediator may be rejected by the parties only for bias. The mediator shall have thirty (30) days from the time of appointment to meet with the parties and sixty (60) days from the time of the appointment to resolve the dispute unless the parties mutually consent to an extension of the sixty day deadline. All reasonable fees, costs, and expenses of the mediator, the mediator's association and the mediation agency, shall be borne equally by the parties. Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs at mediation.

The Contractor shall not cause a delay of work during mediation proceedings except by mutual agreement. All mediation proceedings shall be conducted in the City of Greeley, unless an alternate location is agreed upon in writing by the Owner and the Contractor.

**Amounts in dispute which are less than \$10,000 shall not progress beyond mediation.**

**35.4 Litigation prerequisites:** The procedures enumerated in Sections 35.2 and 35.3 shall be a prerequisite to the filing of any litigation between the parties to the Contract. Failure of the Contractor to follow the provisions of Section 35.2 and Section 35.3 shall be a complete defense, and grounds for immediate dismissal of any litigation filed prior to Contractor engaging in negotiation and mediation with the City of Greeley as provided above. Litigation may be filed only if the amount in dispute is \$100,000 or more. In the event litigation is filed by and between the parties after mediation, venue and jurisdiction of any and all suits and causes of action in connection with this Contract shall lie exclusively in Weld County, Colorado.

**35.5 Arbitration:** After mediation, instead of litigation, any remaining unresolved controversy or claim arising out of or relating to this Contract or the performance or breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. For amounts in dispute which are \$100,000 or more, arbitration shall be engaged only upon mutual written agreement by the Owner and the Contractor, and the written agreement shall specify whether the arbitration shall be binding or nonbinding; however, amounts in dispute which are less than \$100,000 shall necessarily be settled by binding arbitration. The sole arbitrator shall be appointed by the Arbitration Association, unless a different arbitrator or dispute resolution agency is mutually agreed upon. The award of the arbitrator shall be accompanied by a reasoned opinion, and shall include findings of fact and conclusions. All fees and expenses of

the arbitration, including the expense of each party's counsel, experts, witnesses, and preparation and presentation of proofs, shall be borne by the party against whom arbitration judgment is made.

35.6            Litigation:     Each party shall bear its own litigation fees and expenses, including the expense of its counsel, experts, witnesses, and preparation and presentation of proofs, regardless of the prevailing party.

## **ARTICLE 36 FORCE ACCOUNT WORK**

36.1            This Article shall become operative upon failure of the Contractor and the Owner to arrive at an amount of compensation under Article 28, CHANGES. In the event that no equitable adjustment is arrived at either by mutual agreement or pursuant to the Article 35, DISPUTES, the compensation paid hereunder will be the total compensation.

36.2            Work Performed by or for Contractor: The Contractor will be paid for labor, materials, and equipment as hereinafter provided, except where agreement has been reached to pay in accordance with Paragraph 36.3 of this Article. The following percentages, as full compensation for profit, overhead and small tools, will be added to the totals computed as provided in subparagraphs 36.2.1 through 36.2.3 of this Article.

Labor	25 percent
Materials	20 percent
Equipment	10 percent

Labor, materials, and equipment shall be furnished by the Contractor or by a subcontractor. When work paid on a force account basis is performed by forces other than the Contractor's, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the Owner for such work and, except as specified herein, no additional payment therefore will be made by the Owner by reason of performance of work by a subcontractor or by others. In addition to the markups, if any, for labor, equipment, and materials, for subcontracted work, the Contractor may add an additional five percent markup. The cost of subcontracted work will be the actual cost to the contractor for work performed by a subcontractor as computed in accordance with this Paragraph 36.2 and its subparagraphs 36.2.1, 36.2.2, and 36.2.3.

36.2.1            Labor: The cost of labor used in performing the work, whether the employer is the Contractor or a subcontractor, will be the sum as determined on the basis of the following three subparagraphs:

36.2.1.1            The gross actual wages, including income tax withholdings but not including employer payments to or on behalf of workmen for health and welfare, pension, vacation, insurance and similar purposes.

36.2.1.2            To the gross actual wages, as defined in the previous subparagraph,

36.2.1.1.1,            will be added a percentage based upon current State and Federal laws and applicable labor contracts concerning payments made to or on behalf of workmen other than actual wages, which percentage will constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to or on behalf of the workmen, other than actual wages as defined in the previous subparagraph 36.2.1.1 and the subsistence and travel allowance as specified

in the following subparagraphs 36.2.1.3. The Contractor shall compute a separate percentage for each craft, or a composite percentage for all crafts, if so approved by the Owner. Computed percentages shall be submitted to the Project Manager for approval by the Owner.

36.2.1.3 Subsistence and travel allowance paid to workmen as required by established agreements.

36.2.1.4 The charges for labor shall include all classifications up to but not including foremen, and when authorized by the Owner, shall include foremen engaged in the actual and direct performance of the work. Labor charges shall not include charges for assistant superintendents, office personnel, timekeepers, and maintenance mechanics, unless authorized by the Owner in advance of the start of work.

36.2.2 Materials: The cost of materials required for the accomplishment of the work will be delivered cost to the purchaser, whether contractor or subcontractor, from the supplier thereof, except as the following are applicable:

36.2.2.1 If a cash or trade discount by the actual supplier is offered or available to the Contractor, it shall be credited to the Owner notwithstanding the fact that such discount may not have been taken.

36.2.2.2 If materials are procured by the Contractor by a method which is not a direct purchase from and a direct purchase from and a direct billing by the actual supplier, the cost of such materials will be deemed to be the price paid to the actual supplier, as determined by the Owner. No additional markup for supplier work will be allowed except to the extent of actual cost to the Contractor in handling the material, not to exceed five percent of the price paid to actual supplier.

36.2.2.3 If the materials are obtained from a supply or source owned wholly or in part by the Contractor, payment therefore will not exceed the price paid for similar materials furnished from said source on Contract Items or the current wholesale price for such materials delivered to the work site, whichever price is lower.

36.2.2.4 If the cost of the materials is, in the opinion of Owner, excessive, then the cost of such materials will be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the job site, less discounts as provided in subparagraph 36.2.2.1 of this Article.

36.2.2.5 If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost will be determined in accordance with subparagraph 36.2.2.4 of this Article.

36.2.2.6 The Contractor shall have no claims for costs and profit on Owner-furnished materials.

36.2.3 Equipment: The Contractor will be paid for the use of contractor-owned or rented equipment at the rental rates shown in the Colorado State Department of Highways Construction Equipment Rental Rate Schedule, except as modified below, which edition shall be the latest edition in effect at the time of commencement of the Force Account work. For equipment used in excess of eight hours per day, the rental rate shall be 60 percent of the listed hourly rate. If it is deemed

necessary by the Contractor to use equipment not listed in the C.D.O.H. Construction Equipment Rental Rate Schedule, the Contractor shall furnish the necessary cost data and paid invoices to the Project Manager for his use in establishment of such rental rate.

36.2.3.1 The rates paid as above provided will include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance, depreciation, storage, insurance and incidentals.

36.2.3.2 Equipment operators will be paid for as stipulated in subparagraph 36.2.1 of this Article.

36.2.3.3 Equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

36.2.3.4 Unless otherwise specified, manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that equipment.

36.2.3.5 Individual pieces of equipment or tools having a net individual value of \$300 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.

36.2.3.6 Compensation will not be allowed while equipment is inoperative due to breakdown. Except as specified in paragraph 36.2.3.7 of this Article, time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one half hour.

36.2.3.7 Equipment at the Work Site: The time to be paid for use of equipment on the work site will be the time the equipment is in operation on the force account work being performed. The time will include the time required to move the equipment to location of the force account work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is used at the site of the force account work on other than such force account work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is used at the site of the force account work on other than such force account work.

36.3 Special Items of Work: If the Owner and the Contractor, by agreement, determine that (a) an item of force account work does not represent a significant portion of the total Contract price, and (b) such items of work cannot be performed by the forces of the Contractor or the forces of any of his subcontractors, and (c) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in Paragraph 36.2 of this Article would require, charges for such special force account work items may be made on the basis of invoices for such work without complete itemization of labor, materials, and equipment rental costs. To such invoiced price, less a credit to the Owner for any cash or trade discount offered or available, will be added five percent of the discounted price, in lieu of the percentages provided in Paragraph 36.2 of this Article. In no event will the price paid exceed the current fair market value of such work plus five percent.

36.4 Records: The Contractor shall maintain his records to provide a clear distinction between the direct costs of work paid for on a force account basis and costs of other operations.

36.4.1 The Contractor shall prepare and furnish to the Project Manager, on the following work day, report sheets in duplicate of each day's work paid for on a force account basis. The daily report sheets shall itemize the materials used and shall cover the direct cost of labor and the charges for equipment, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in Paragraph 36.3 of this Article. The daily report sheets shall provide names or identifications and classifications of workmen and the hourly rate of pay and hours worked. In addition, a report of the size, type and identification number of equipment and hours operated shall be furnished to the Project Manager. Daily report sheets shall be signed by the Contractor or his authorized agent.

36.4.2 Material changes shall be substantiated by valid copies of vendor's invoices or conformed copies, certified true by the Contractor. Such invoices shall be submitted with the daily report sheets. Should the vendor's invoices not be submitted within 20 days after the date of delivery of the material or 15 days after acceptance of the work, whichever comes first, the Owner reserves the right to establish the cost of such materials at the lower current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the work, less any discounts provided in subparagraph 36.2.1. of this Article.

36.4.3 The Project Manager will compare his records with the daily report sheets furnished by the Contractor, make any necessary adjustment and compile the costs of work paid for on a force account basis on daily force account work report forms. When these daily reports are agreed upon and signed by the Project Manager, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.

36.4.4 The Contractor's original cost records pertaining to work paid for on a force account basis shall be retained and shall be open to inspection and audit as required by Article 28, CHANGES, and any other provisions of the Contract.

36.5 If, in the Project Manager's opinion, the Contractor or any of his subcontractors, in performing Force Account work, is not making efficient use of labor, material or equipment or is proceeding in a manner which makes Force Account work unnecessarily more expensive to the Owner, the Project Manager may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways: (1) the timing of the work, (2) the use of unnecessary labor or equipment, (3) the use of a higher percentage of apprentices than in non-force account work, (4) failure to procure materials at the lowest price, or (5) using materials of quality higher than necessary.

## **ARTICLE 37**

### **TERMINATION FOR CONVENIENCE OF THE OWNER**

37.1 The performance of Work under this contract may be terminated by the Owner in accordance with this Article in whole, or from time to time in part, whenever such termination is in the best interest of the Owner. Such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

37.2 After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:

37.2.1 Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

37.2.2 Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

37.2.3 Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

37.2.4 Assign to the Owner in the manner, at the times, and to the extent directed by it, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

37.2.5 Settle outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require, which approval or ratification shall be final for the purposes of this Article;

37.2.6 Transfer title and deliver to the Owner in the manner, at the times, and to the extent, if any directed by it, (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other material procured as part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property, which, if the Contract had been completed, would have been required to be furnished to the Owner;

37.2.7 Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices direction or authorized by the Owner, property of the types referred to in (37.2.5) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; provided further that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the Owner to the contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;

37.2.8 Complete performance of each part of the work as shall not have been terminated by the Notice of Termination; and

37.2.9 Take such action as may be necessary, or as the Project Manager may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

37.3 After receipt of a Notice of Termination, the Contractor shall submit to the Project Manager his termination claim, in the form and with certification prescribed by the Owner. Such claims shall be submitted promptly but in no event later than the earliest of the following: (1) one year from the effective date of termination or (2) thirty days after the remainder of the project has been accepted by the owner.

37.4 Subject to the provision of Paragraph 37.3, the contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include an allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work terminated. The Contract will be amended accordingly, and the Contractor will be paid the agreed amount.

37.5 In the event of failure of the Contractor and the Owner to agree, as provided in Paragraph 37.4, upon the whole amount to be paid the Contractor by reason of the termination of work pursuant to this Article, the Owner will pay the Contractor the amounts determined by the Owner as follows, but without duplication of any amounts agreed upon in accordance with Paragraph 37.4;

37.5.1 With respect to contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

37.5.1.1 The cost of such work;

37.5.1.2 The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in subparagraph 37.2.5 above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under 37.5.1 above.

37.5.1.3 A sum, as profit on 37.5.1.1 above, determined by the Owner to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph 37.5.1.3 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.

37.5.2 The reasonable cost of the preservation and property incurred pursuant to subparagraph 37.2.9 and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

37.5.3 The total sum to be paid to the contractor under paragraph 37.5.1 above will not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of the work terminated.

37.6 In arriving at the amount due the Contractor under this Article, there will be deducted (1) any claim which the Owner may have against the Contractor in connection with this Contract, (2) the agreed price for, or the proceeds of sale, of materials, supplies or other things acquired by the contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the Owner and (3) the full amount of any statutory or other claim against the Contractor filed with the Owner.

37.7 Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the Owner at all reasonable times at the office of the Contractor but without direct charge to the Owner, all his books, records, documents, electronic/digital media and other evidence bearing on the costs and expenses of the Contractor under this Contract and related to the work terminated hereunder, or to the extent approved by the Owner, or other authentic reproductions thereof.

37.8 The Contractor shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a Notice of Termination from the Owner and shall require that any tier subcontractors insert the same provision in any tier subcontracts.

37.9 Under no circumstances is the Contractor entitled to anticipatory, unearned profits or consequential damages as a result of a termination or partial termination under this Article.

### **ARTICLE 38 TERMINATION FOR DEFAULT**

38.1 If, in the opinion of the Owner, the Contractor has failed to prosecute work, the Owner will notify the Contractor. The Contractor will then have 5 days to remedy the failure to prosecute work or to obtain the Owner's authorization for the delay or an extension of time as set forth in Article 32.

38.2 If the Contractor refuses or fails after reasonable notice as set forth above to prosecute Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or refuses or fails to complete said Work within such time, the Owner may, by written notice to the Contractor, terminate for default his right to proceed with the Work or such part of the Work as to which there has been unauthorized delay. In such event the Owner may take over the work and prosecute the same to completion, by Contractor or otherwise, and may take possession of and utilize in completing the Work such materials, appliances, and plant as may be on the Work Site and necessary therefore. Whether or not the Contractor's right to proceed with the Work is terminated, he and his sureties shall be liable for any damage to the Owner resulting from his refusal or failure to complete the Work in the specified time.

38.3 If the Owner so terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such time as may be required for final completion of the Work together with any increased costs incurred by the Owner in completing the Work as further set forth in Article 41.

38.4 If, after Notice of Termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article or that the Contractor was entitled to an extension of time under Article 32,



EXTENSION OF TIME, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Article 37, TERMINATION FOR CONVENIENCE OF THE OWNER.

38.5 The right to terminate for default and any other rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

### **ARTICLE 39**

#### **TERMINATION OF RIGHT TO PROCEED FOR CERTAIN DEFAULTS**

39.1 In addition to the Owner's right to terminate for default under other Articles of this Contract, the Owner will have the right to terminate the Contractor's performance of work in whole or in part for default for any of the following reasons:

39.1.1 The Contractor's or subcontractor's performance of work is in violation of the terms of the Contract.

39.1.2 The Contractor or subcontractor has violated an authorized order or requirement of the Owner.

39.1.3 Abandonment of Contract.

39.1.4 Assignment or subcontracting of the Contract or any work under the Contract without approval of the Owner.

39.1.5 Bankruptcy or appointment of a receiver for the Contractor's property.

39.1.6 Performance of the Contractor in bad faith.

39.1.7 Contractor allowing any final judgment to stand against him for a period of 48 hours (excluding weekends and legal holidays).

39.2 If, in the opinion of the Owner, the Contractor is in default of the Contract, the Owner will notify the Contractor. If the Contractor fails to remedy or commence to remedy the default within five days after receipt of such notice, the Owner may terminate the Contractor's right to proceed with the Work or that portion of the Work which the Owner determines is most directly affected by the default.

39.3 If, after Notice of Termination of Contractor's right to proceed under this Article it is determined for any reason Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Article 37, TERMINATION FOR CONVENIENCE OF THE OWNER.

### **ARTICLE 40**

#### **RIGHTS AND OBLIGATIONS OF PARTIES AT TERMINATION FOR DEFAULTS**

40.1 This Article shall apply to terminations for defaults covered in Article 15, 38, and 39 of these General Conditions.

- 40.2 On receipt of a Notice of Termination from the Owner, the Contractor shall:
- 40.2.1 Stop all work under the Contract on the date and to the extent specified in the Notice of Termination.
- 40.2.2 Place no further orders or subcontracts for materials, equipment or services except as they relate to the performance of work covered by the Notice of Termination.
- 40.2.3 Cancel or terminate all orders or subcontracts to the extent that they relate to the performance of work covered by the Notice of Termination.
- 40.2.4 Comply with all other requirements of the Owner as may be specified in the Notice of Termination.
- 40.3 Upon the Owner termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, the Owner will have the right to complete the Work by whatever means and method it deems advisable. The Owner shall have the right to take possession of and use any or all the Contractor's materials, plat, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during their use by the Owner. The Owner will not be required to obtain the lowest prices for completing the Work but shall make such expenditures as, in the Owner's sole judgment, best accomplish such completion.
- 40.4 The expense of completing the Work, together with a reasonable charge for engineering, managerial and administrative services, as certified by the Owner, will be charged to the Contractor and the expense so charged will be deducted by the Owner out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is in excess of the sum which otherwise would have been payable to the Contractor under the Contract, the Contractor or his surety shall promptly pay the amount of such excess to the Owner upon notice from the Owner of the excess so due. The Owner may, in its sole discretion, withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination of Contractor's right to proceed.
- 40.5 The Contractor shall insert in all subcontracts that the subcontractor will stop work on the date of or to the extent specified in a Notice of Termination from the Owner and shall require the subcontractors to insert the same provision in any tier subcontracts.
- 40.6 The Contractor shall immediately upon receipt communicate any Notice of Termination issued by the Owner to the affected subcontractors and suppliers at any tier.
- 40.7 Rights of Surety: The Surety on the Performance Bond provided for in this Contract shall not be entitled to take over the Contractor's performance of work in case of termination under this Article, except with the consent of the Owner.

## **ARTICLE 41 LIQUIDATED DAMAGES**

41.1 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 Contract, the Contractor shall pay to the Owner as fixed, agreed and liquidated damages, pursuant to the clause of the Contract entitled TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS, the sum of \$500.00 for each calendar day of delay unless otherwise stated in the Special Provisions. Such liquidated damages shall be assessed for each and every day that the Contractor shall be in default. The Owner 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.

41.2 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.

41.3 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.

41.4 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.

## **ARTICLE 42 USE AND POSSESSION PRIOR TO COMPLETION**

42.1 The Owner shall have the right to take possession of or use any completed or partially completed parts of the Work. Such possession or use will not be deemed an acceptance of Work not completed in accordance with the Contract. While the Owner is in such possession, the Contractor, notwithstanding the provisions of Article 18, DAMAGE TO WORK AND RESPONSIBILITIES FOR MATERIALS, will be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence or breach of warranty. If such prior possession or use by the Owner delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of completion will be made, and the Contract will be modified in writing accordingly.

**ARTICLE 43**  
**RIGHTS IN SHOP DRAWINGS AND WORKING DRAWINGS**

43.1 Shop Drawings and Working Drawings, submitted to the Project Manager by the Contractor, subcontractor or any lower tier subcontractor pursuant to the Work, may be duplicated by the Owner and the Owner may use and disclose, in any manner and for any purpose, Shop Drawings and Working Drawings delivered under this Contract.

43.2 This Article, including this Paragraph 43.2, shall be included in all subcontracts hereunder at all tiers.

**ARTICLE 44**  
**PATENT AND COPYRIGHT**

44.1 The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If notified promptly in writing and given authority, information and assistance, the Contractor shall defend, or may settle, at his expense, any suit or proceeding against the Owner or the Project Manager based on a claimed patent or copyright infringement which would result in a breach of his warranty. The Contractor shall pay all damages and costs awarded therein against the Owner or the Project Manager due to such breach. If any use of materials, equipment or devices is held to constitute an infringement and such use is enjoined, the Contractor shall, at his expense and option, either procure for the Owner the right to continue using said materials, equipment or devices, or replace same with noninfringing materials, equipment or devices, or modify same so it becomes noninfringing. The Contractor shall report to the Owner promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Owner when requested by the Owner, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Owner except where the Contractor has agreed to indemnify the Owner. This clause shall be included in all subcontracts.

**ARTICLE 45**  
**HISTORICAL, SCIENTIFIC AND ARCHAEOLOGICAL DISCOVERIES**

45.1 All articles of historical, scientific or archaeological interest uncovered by the Contractor during progress of the Work shall be preserved in accordance with applicable law and reported immediately to the Project Manager. Further operations of the Contractor with respect to the find, including disposition of the articles, will be decided by the Owner in accordance with applicable law.

**ARTICLE 46**  
**SUBSTITUTIONS**

46.1 Where reference is made to one or more proprietary products but restrictive descriptive material of only one manufacturer is used, it is understood that the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the plans and

specifications and are compatible with the intent and purpose of the design, subject to the written approval of the Owner and the Project Manager. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design.

46.2 The Contractor may propose the substitutions of any material as a supplement to his bid with the monetary amount, additive or deductive as may be the case, clearly stated. Manufacturer's information, catalog numbers, and complete descriptive information shall be included with the proposed substitution. This shall be completely apart and separate from the base bid quotation and shall be solely for the information of the Owner, and the use of such proposed substitutions shall be strictly at the decision of the Owner. If substitution is accepted by the Owner, the Contract sum shall be adjusted from the base bid either up or down as indicated on the supplementary list.

## **ARTICLE 47 INSURANCE**

### **47.1 General**

47.1.1 The Contractor shall provide from insurance companies, acceptable to the Owner, the insurance coverage designated hereinafter and pay all costs. The Contractor also indemnifies the Owner as further described in Article 4.

47.1.2 Before commencing work under this Agreement, the Contractor shall furnish the Owner with certificates of insurance specified herein showing the type, amount, class of operations covered, effective dates, and date of expiration of policies. Furthermore, each such certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without first giving ten (10) days written notice to the Owner, which notice must be sent registered mail, return receipt requested, to the Project Manager.

47.1.3 In case of the breach of any provision of this Article, the Owner, at his option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper at the Contractor's expense and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement.

47.1.4 The Contractor shall either: (1) require each of his subcontractors to procure and maintain during the life of his subcontract, subcontractors' comprehensive General Liability, Automobile Liability and Property Damage Liability Insurance of the type and in the same amounts as specified in this subparagraph, or (2) insure the activity of his subcontractors in his own policy.

47.1.5 Co-Insurance: The Contractor herein agrees to name the Owner as an insured party on all liability insurance policies provided for by this Article 47, INSURANCE.

47.1.6 No insurance shall be cancelled or otherwise voided during the Contract period, without at least 10 days prior written notice to the Owner, nor shall any insurance be invalidated should the insured waive any or all right of recovery against any party.

47.1.7 Liability insurance may be arranged by Comprehensive General Liability and Comprehensive Automobile Liability policies for the full limits required; or by a combination of underlying Comprehensive Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

47.1.8 The Owner shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interest of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

47.1.9 Any loss insured under Article 47 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his subcontractors in similar manner.

47.1.10 If the Contractor requests in writing that insurance for risks other than those described in this Article or other special hazards be included in the Owner's property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

47.1.11 The Owner as trustee shall have power to adjust and settle any loss with the insurers.

47.1.12 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be cancelled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

## 47.2 Workmen's Compensation and Employer's Liability Insurance:

47.2.1 The Contractor shall provide coverage and amounts as required by the Workmen's Compensation Act of the State of Colorado.

47.2.2 The Contractor shall provide Employer's Liability Insurance in an amount not less than \$100,000 for each occurrence.

47.2.3 The Contractor shall require any subcontractor to provide Workmen's Compensation and Employer's Liability Insurance in the same amounts for all of the subcontractor's employees to be engaged in work under this Agreement.

## 47.3 General Liability

47.3.1 General Liability Insurance shall be on a Comprehensive General Liability form and shall provide coverage for the following: Premises and Operations, Owners and Contractors Protective, Elevators, Independent Contractors, Products and Completed Operations, Contractual, Personal Injury, and Broad Form Property Damage; "XCU" exclusions must be deleted.

47.3.2 Minimum requirements for Comprehensive General Liability are: bodily injury, \$1,000,000.00 each person, \$2,000,000.00 each occurrence; property damage, \$1,000,000.00 each occurrence.

#### 47.4 Automobile Liability

47.4.1 Comprehensive Automobile Liability Insurance shall include coverage for all owned motor vehicles and hired and non-owned motor vehicles.

47.4.2 Minimum requirements for Comprehensive Automobile Insurance are: bodily injury, \$1,000,000.00 each person, \$2,000,000.00 each occurrence; property damage, \$1,000,000.00 each occurrence.

#### 47.5 Property Insurance:

47.5.1 The Owner may require the Contractor to purchase and maintain "Builder's Risk" Property Insurance for all work at the site to the full insurable value thereof. The Owner and the Project Manager shall be named as co-insured.

### **ARTICLE 48 UNCOVERING AND CORRECTION OF WORK**

48.1 During construction, whenever materials requiring inspection in place by the Project Manager and the Owner to be permanently covered up, it shall be Contractor's responsibility to notify the Project Manager at least 24 hours in advance of commencement of such covering operation. In the event of failure by Contractor to give such notification, Contractor shall, at his own expense, uncover such portions of work as required by the Project Manager or the Owner, and reinstall such covering after satisfactory inspection and correction of any and all deficiencies.

### **ARTICLE 49 EQUAL OPPORTUNITY**

49.1 The Contractor agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable laws respecting discrimination and unfair employment practices (24-34-402, CRS 1973, as amended). The Contractor shall be responsible for any discriminatory or unfair employment practices of his subcontractors. Neither the Contractor nor any subcontractor will discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, religion, ancestry, mental or physical handicap, or age. Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin, sex, religion, ancestry, mental or physical handicap, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

49.2 Contractor and all subcontractors shall, in all solicitations or advertisement for employees placed by them or on their behalf, state that qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, religion, ancestry, mental or physical handicap, or age.

## **ARTICLE 50 CLAIMS**

50.1 The Contractor shall not assert any claim arising out of any act or omission by any officer, agent or employee of the Owner in the execution or performance of this Contract against such officer, agent or employee in his or her individual or official capacities.

50.2 The Contractor shall require each Separate Contract Design Professional or Contractor to agree in his Contract not to make any claim against the Owner, its officers, agents or employees, by reason of such Contract with the contractor.

50.3 Nothing in this Contract shall be construed to give any person other than the Owner and the Contractor any legal or equitable right, remedy or claim under this Contract; and it shall be held to be for the sole and exclusive benefit of the Owner and the Contractor.

## **ARTICLE 51 NOTICES**

51.1 Except as otherwise provided herein, any notice, approval, acceptance, request, bill, demand or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U.S. mailbox in a postage-prepaid envelope, addressed to the other party via certified mail. Notices to the Owner shall be addressed to the Project Manager by name. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a notice stating the change and the changed address.

## **ARTICLE 52 LEGAL INSERTIONS, ERRORS, INCONSISTENCIES, OR DISCREPANCIES IN CONTRACT**

52.1 It is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted herein, and if through mistakes or otherwise, any such provision is not inserted in correct form, then this Contract shall upon application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the right of either party.

52.2 If this Contract contains any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors, the Contractor shall request a clarification of same by writing to the Project Manager whose decision shall be binding upon the parties.



## **ARTICLE 53 CAPTIONS OR HEAD NOTES**

53.1 The captions or head notes on articles or sections of this Agreement, and marginal notes are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent hereof, or of this Agreement not in any way affect this Agreement.

## **ARTICLE 54 EFFECTIVE AND BINDING**

54.1 This Contract shall not become effective or binding upon the Owner unless it has been authorized and executed in accordance with the ordinances of the City of Greeley.

## **ARTICLE 55 CONTRACTOR**

55.1 All personnel assigned to the Project by the Contractor shall be required to cooperate fully with personnel of the Owner and if in the sole discretion of the Owner the Contractor's personnel fails so to cooperate, the Contractor shall relieve them of their duties on the Project when required by the Owner.

55.2 Within seven (7) consecutive calendar days after date of written notice to commence work, the Contractor shall designate in writing one person who, on his behalf, shall be responsible for coordinating all of the services to be rendered by the Contractor hereunder. Such designee shall be subject to the approval of the Owner. Any change to the approved designee shall be proposed in writing seven (7) days in advance and subject to Owner approval.

55.3 The Contractor shall engage, at his sole expense, all engineers, architects, cost estimators, lawyers, experts and Contractors as may be required for the proper performance of the Contract. The Contractor shall be responsible for the performance of the work of all architects, engineers, cost estimators, lawyers, experts and Contractors so engaged by him, including maintenance of schedules, correlation of their work and resolution of all difference between them. It is understood that all architects, engineers, cost estimators, lawyers, experts and Contractors are employees of the Contractor and not of the Owner, and the Contractor alone is responsible for their work.

55.4 All drawings, tracings, specifications, digital media/electronic files and other material prepared and furnished under and for this Contract shall become the property of the Owner upon substantial completion and/or their acceptance by the Owner and/or upon termination of the services of the Contractor. Such documents shall be promptly delivered to the Owner upon demand and thereafter may be used by the Owner in whole or in part or in modified form, for those purposes it may deem advisable without further employment of, or payment of additional compensation to, the Contractor.

55.5 The Contractor shall not, without the prior written approval of the Owner, specify for the project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

55.6 Should any claim be made or any action brought against the Owner relating to the design and satisfactory operation of the Project herein, the Contractor shall diligently render to the Owner without additional compensation any and all assistance which may be requested by the Owner.

55.7 The Owner's Project Manager's decision shall be final and binding upon the Contractor as to all matters arising in connection with or relating to this Contract. The Project Manager shall determine the amount, quality, acceptability and fitness of the work being performed hereunder and shall determine all matters relative to the fulfillment of this Contract on the part of the Contractor and such determination shall be final and binding on the Contractor. Acceptance by the Owner of any document hereunder and all supporting documents shall not relieve the Contractor of sole responsibility for work performed under this contract, including, but not limited to, the final design of the Project, including the plans, specifications and all supporting documents, except as to any feature thereof which the Owner had specifically directed in writing to be included over the written objection of the Contractor. In case any question shall arise, the decision of the Owner's Project Manager, who is hereby accepted by the Contractor as the arbiter, shall be a condition precedent to the right of the Contractor to receive any money under this Contract.

## **ARTICLE 56 APPEALS**

56.1 Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by Agreement shall be decided by the Project Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Project Manager shall be final and conclusive unless, within fifteen (15) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Project Manager a written notice of appeal.

56.2 In the event a decision of the Project Manager is the subject of an appeal, such dispute may be settled by appropriate legal proceeding, or, if the parties mutually agree, through arbitration or administrative process. Pending any binding arbitral or administrative decision, appeal, or judgment referred to in this section or the settlement of any dispute arising under this Contract, the Contractor shall proceed diligently with the performance of this Contract.

56.3 Venue and jurisdiction of any suit, right, or cause of action arising under or in connection with this Contract shall lie exclusively in Weld County, Colorado.

## **ARTICLE 57 PROHIBITED INTEREST**

57.1 No member, officer or employee of the City of Greeley shall have any financial or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

## **ARTICLE 58 FINDINGS CONFIDENTIAL**

58.1 Any reports, information, data, etc., available to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without consent in writing from the Owner subject to applicable law.

## **ARTICLE 59 GENERAL PROVISIONS**

59.1 Services and work performed by Contractor under this Contract shall conform to reasonable and normal professional standards known and accepted within the community.

59.2 No reports, graphics or other material produced directly or indirectly for the Owner under this Contract shall be the subject of an application for copyright or trademark by or on behalf of Contractor.

59.3 The laws of the State of Colorado and applicable Federal, state and local laws, regulations and guidelines shall govern hereunder.

59.4 The headings of the articles, clauses, and paragraphs of this Contract are inserted for reference purposes only and are not restrictive as to content.

59.5 This Contract and any subsequent amendment shall be deemed an original having identical legal effect, and all of which together constitute one and the same instrument.

59.6 Nothing contained herein shall be deemed to give any third party any claim or right of action against the Owner which does not otherwise exist without regard to this Contract.

59.7 Where a number of days is specified in this Contract it shall mean calendar days unless otherwise specified.

59.8 This Contract shall not be assigned, in whole or in part, without the written consent of the Project Manager and Contractor.

59.9 The Owner certifies the following;

A. An amount of money equal to or greater than the Contract amount has been appropriated and budgeted for the Project which this Contract concerns.

B. No Change Order which requires additional compensable work to be performed by the Contractor will be issued by the Owner unless an amount of money has been appropriated and budgeted sufficient to compensate the Contractor for such additional compensable work unless such work is covered under the remedy-granting provisions of this Contract.

C. As used in this paragraph, "remedy granting provision" shall mean any clause of this Contract which permits additional compensation in the event of a specific contingency or event occurs. This term shall include, but not be limited to, change clauses, differing site conditions clauses, variation in quantities clauses, and termination for convenience clauses.

## **ARTICLE 60 CONTRACTOR ACCEPTANCE**

60.1 The acceptance by the Contractor, his successors or assigns of any payment made on the final acceptance of the Project under this Contract or of any final payment due on termination of this Contract, shall constitute a full and complete release of the Owner from any and all claims, demands and causes of action whatsoever which the Contractor, his successors or assigns have or may have against the Owner under the provisions of this Contract.

60.2 No action shall be maintained by the Contractor, its successors or assigns, against the Owner on any claims based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within 180 days after the date of filing of the voucher for final payment hereunder in the office of the Finance Director, or within 180 days of the termination of this Contract.

## **ARTICLE 61 SUCCESSORS AND ASSIGNS**

61.1 The Contractor binds itself, its partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect of all covenants of this Agreement. The Contractor shall not transfer, assign, or subcontract any interest in this Agreement.

## **ARTICLE 62 SEVERABILITY CLAUSE**

62.1 If any provision of this Agreement is subsequently declared by legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable laws, statutes, and regulations of the United States of America and the State of Colorado, all other provisions of this Agreement shall remain in full force and effect.

## **ARTICLE 63**

63.1 This Agreement represents the entire and integrated Agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

## **ARTICLE 64**

64.1 In accordance with C.R.S. §8-17-101, all parties contracting with the City of Greeley on public works projects shall employ Colorado labor to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this project.

## **ARTICLE 65**

65.1 The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Contract Documents, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.



SECTION 520  
SUBCONTRACTORS/MATERIALS SUPPLIERS AND RELATED DATA

Firm Name: \_\_\_\_\_ City Contractors License # \_\_\_\_\_  
Primary Contractor \_\_\_\_\_  
PROJECT: \_\_\_\_\_ Address: \_\_\_\_\_

For each Subcontractor and/or Materials Suppliers to be utilized, please provide the following information  
(use additional sheets as necessary):

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Proposed work and percentage of total work to be assigned \_\_\_\_\_  
Percentage: \_\_\_\_\_ %

Firm Name: \_\_\_\_\_ City Contractors License # \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Proposed work and percentage of total work to be assigned \_\_\_\_\_  
Percentage: \_\_\_\_\_ %

Firm Name: \_\_\_\_\_ City Contractors License # \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Proposed work and percentage of total work to be assigned \_\_\_\_\_  
Percentage: \_\_\_\_\_ %

Firm Name: \_\_\_\_\_ City Contractors License # \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Proposed work and percentage of total work to be assigned \_\_\_\_\_  
Percentage: \_\_\_\_\_ %

Firm Name: \_\_\_\_\_ City Contractors License # \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Proposed work and percentage of total work to be assigned \_\_\_\_\_  
Percentage: \_\_\_\_\_ %

If the Primary Contractor adds any Subcontractors or Materials Suppliers during the duration of the project, the Primary Contractor will supply the City with an updated form before the Subcontractor or Materials Supplier will be allowed to work on the project.