



**MESA COUNTY**

**GENERAL CONTRACT  
CONDITIONS**

May 2022

**Mesa County, Colorado  
General Contract Conditions**

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**I. GENERAL**

**1. Scope**

The following general contract conditions shall apply to contract Work awarded by Mesa County (“County”) for all construction within the public right-of-way and in all other areas of County jurisdiction or ownership. The following conditions are general in scope and may contain requirements covering conditions that may not be encountered in the performance of the Work under contract.

**2. Titles and Subtitles.**

Titles used in the Contract Documents having a masculine gender, such as “workmen” and the pronouns “he” or “his”, are for the sake of brevity and are intended to refer to persons of either sex.

The titles and headings of the sections and subsections herein are intended for convenience and shall not be taken or considered as having any bearing on their interpretation.

When the Contract indicates that Work is to be accepted, acceptable, subject to approval, approved, authorized, condemned, considered necessary, contemplated, deemed necessary, designated, determined, directed, disapproved, established, given, indicated, deemed insufficient, subject to interpretation, interpreted, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory, it shall be understood that these expressions are followed by the words “By the Engineer” or “To the Engineer.”

Then the Contract indicates something “shall” be done, the action is required and is not discretionary.

**3. Definitions and Terms.**

Additional definitions and terms are provided in Section 101 of Mesa County Standard Construction Specifications. Whenever the following abbreviations or terms are used in these specifications, plans, or other Contract Documents, the intent and meaning shall be interpreted as follows:

**Addenda.** Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents of the Contract Documents.

**Advertisement for Bids.** A public announcement, inviting proposals for Work to be performed or materials to be furnished. The advertisement will indicate with reasonable accuracy the quantity and location of Work to be done or the character and quantity of material to be furnished and the time and place of the opening of proposals.

**Application for Payment.** The form accepted by County which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Award.** The acceptance by the County of a proposal.

**Bid.** The offer or proposal of the Bidder submitted on the prescribed form setting forth the process for the Work to be performed.

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**Bidder.** An individual, firm, corporations, or other legal entity submitting a bid for the advertised Work.

**Bid Documents.** These shall consist of the following forms and documents: Construction Drawings, Addenda (if any), Advertisement to Bid, Instruction to Bidders, Bid Form, Bid Bond Form, Standard Specifications, Special Conditions, Special Provisions, Supplemental Specifications, and Standard Construction Drawings (not attached).

**Bid Opening.** The public opening and reading of all bids prepared and submitted in accordance with the Instructions to Bidders at the time and date set forth in the Advertisement to Bid.

**Bid Guaranty.** The security, as designated in the Instructions to Bidders and furnished with the Bid as a guaranty that the Bidder shall enter into the Contract and furnish the Bonds and Certificates of Insurance as required if awarded the Work.

**Bid Schedule.** A list of Bid Items in the Bid Form, which includes a description, approximate quantity and units (if any), unit price and extended amount or lump sum bid, for each item. The Bid Schedule also includes a line for the Total Bid based on the summation of the extended amounts of all bid items. The Bid Schedule may also include bid alternates.

**Bonds.** Bid, performance, payment, and maintenance bonds as well as other instruments of security.

**Calendar Day.** Each and every day shown on the calendar, beginning and ending at midnight. When day is used, it shall mean calendar day unless otherwise defined.

**Certified Invoice.** Any invoice or billing endorsed by Contractor, certifying that material, specialty work, subcontract work, rental, lease, services, etc., were acquired for the project and that the invoiced or billed amount represents the actual cost.

**Change Order.** A written order issued to Contractor by County covering contingencies, extra work, increase or decreases in contract quantities, and establishing the basis of payment and time adjustments for the work affected by the changes. The Change Order is the only method authorized for changing the Contract. Change Orders must be approved as established in the Contract.

**Construction Drawings. (Drawings, Plan).** The Drawings or Plans which show the character and scope of Work to be performed which have been prepared or approved by the County and are referred to in the Contract Documents (including Standard Details).

**Contract.** The written agreement between County and Contractor setting forth the obligations of the parties for the performance of Work and the basis of payment. Other Contract Documents are attached to the Contract and made a part thereof as provided therein.

**Contract Documents.** Includes Contract, the Advertisement for Bids, bid documents, Standard Specifications, project special provisions, general and detailed plans, Notice to Proceed, contract modification orders, and authorized extensions of contract times, all of which constitute one instrument.

**Contract Price.** The total of price or prices set forth in Contractor's Bid, which constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work.

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**Contract Time.** The number of working days or calendar days allowed for completion of the Contract, including authorized time extensions. Where a calendar date of completion is specified, the Contract shall be completed on or before that date.

**Contractor.** The individual, firm, corporation, or other legal entity contracting with County for performance of the prescribed Work.

**County.** Mesa County, a political subdivision of the State of Colorado.

**County Representative.** The authorized representative of County shall be the Mesa County Engineering Division or the applicable Division's designated representative(s), who are assigned to the project or any part thereof.

**Defective Work.** Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or does not meet the requirements of a referenced standard, test, or approval referred to in the Contract Documents, or has been damaged prior to County's recommendation of Final Payment (unless responsibility for the protection thereof has been assumed by the County at Substantial Completion).

**Department.** Mesa County Public Works Department.

**Drawings.** Same meaning as Construction Drawings.

**Effective Date.** The date indicated in Contract or notice on which it becomes effective, but if no such date is indicated, the date on which the instrument is fully signed and delivered by the last of the parties involved.

**Engineer.** Mesa County Public Works Director of Engineering acting directly or through an authorized representative(s), who is responsible for the engineering, construction, and administrative supervision of the Project/Work. References to Engineer that related to engineering and design of the Project shall refer to the designated Design Project Manager for the Project. All other references to Engineer which relate to the administration of the construction of the Project shall refer to the Construction Group Manager.

**Extra Work.** Work not provided for in the Contract as awarded but found by the Engineer to be essential to the satisfactory completion of the Contract within its intended purpose.

**Field Order.** A written order issued by the Engineer which directs or allows minor changes in the Work, and which does not involve a change in the Contract price or Contract Time. Also known as Force Account Work.

**Final Completion.** The date upon which the Work, in County's opinion and based upon its inspection, is acceptable and fully performed in accordance with the Contract Documents, and all other requirements or conditions to County's advertisement of the Project for final payment have been fulfilled. Final Completion shall be evidenced by County's issuance of a Notice of Final Completion.

**Force Account Work.** Work paid for on the basis of actual costs plus approved additives.

**Holidays.** Holidays recognized by County are:

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New Year's Day  
Dr. Martin Luther King, Jr.'s Birthday (observed)  
Washington-Lincoln Day  
Memorial Day  
Independence Day  
Labor Day  
Veteran's Day  
Thanksgiving Day (and the Friday after)  
Christmas Day

When a Holiday, as listed above, falls on a Sunday, the following Monday shall be considered a holiday. When one of these days falls on a Saturday, the preceding Friday shall be considered a holiday.

**Inspector.** An authorized representative of County, assigned to inspect and/or test materials furnished or Work performed by Contractor.

**Modification.** (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Contract.

**Notice of Award.** The written notice by County to the apparent Successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, County shall sign and deliver the Contract.

**Notice to Proceed.** Written notice to Contractor to proceed with the contract Work including, when applicable, the date of beginning of contract time.

**Original Contract Amount.** The sum of the total dollar amounts bid for all the construction pay item quantities.

**Plans.** Same meaning as Construction Drawings.

**Pre-construction Conference.** A meeting of County Project personnel, Contractor Project personnel and other stakeholders held prior to the beginning of construction at which topics pertinent to the successful completion of the Work are discussed.

**Project.** The specific Work to be performed as described in the Contract Documents.

**Shop Drawings.** A general term that includes drawings, illustrations, samples, schedules, calculations, and other data which provide details of the construction of the Work and details to be used by the Engineer for inspection. Shop drawings include data which illustrates material, equipment, and items which are incorporated in and become part of the permanent Work in accordance with the Contract.

**Special Provisions.** Additions and revisions to the standard specifications covering conditions specific to an individual project.

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**Specifications.** Those portion of the Contract Documents consisting of written technical descriptions of materials, equipment, standards and workmanship as applied to the Work. These may consist of Standard or Supplemental Specifications, Special Provisions, and/or notes on the Construction Drawings.

**Standard Specifications.** Mesa County Standard Construction Specifications which amend and supplement the Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction.

**Subcontractor.** An individual, firm, corporation, or other legal entity to whom Contractor sublets part of the Contract.

**Substantial Completion.** The Work (or a specified part thereof) that has progressed to the point where, in the opinion of the Engineer as evidenced by the issuance of a certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work or specified part can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when final payment is due in accordance with Item **57. Acceptance.** The terms “substantially complete” and “substantially completed” as applied to any Work refer to Substantial Completion thereof.

**Superintendent.** Contractor’s authorized employee in responsible charge of the Work.

**Supplemental Specifications.** Additional Specifications which may be necessary to cover Work peculiar to an individual project, which is not addressed by the Standard Specifications. Supplemental Specifications may be a section in the Bid Documents or may appear as notes on Construction Drawings.

**Surety.** The corporation, partnership, or individual, other than Contractor, executing a bond furnished by Contractor.

**Value Engineering Proposal (VEP).** A change to contract requirements proposed by Contractor which will accomplish the project’s functional requirements at less cost or improve value or service at no increase or at a minor increase in cost.

**Work.** The furnishing of all labor, materials, equipment, and incidentals necessary to successfully complete the project according to all duties and obligations imposed by the Contract. Also referred to as Project.

**Working Day.** Any day, exclusive of Saturdays, Sundays and holidays, on which weather and other conditions not under control of Contractor will permit construction operations to proceed with the normal working force engaged in performing those items controlling the completion of the Work.



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**II. LAWS, PERMITS AND LABOR EMPLOYMENT**

**4. Laws to be Observed.**

Contractor shall keep fully informed and comply with all Federal, State, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which may affect those engaged or employed on the Work. Contractor shall protect and indemnify County and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Contractor, the subcontractors, suppliers of materials or services, or their employees.

When the United States Government participates in the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by Contractor, and the Work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall not make the United States Government a party to the Contract and shall not interfere with the rights of the parties to the Contract.

**5. Permits, Licenses, and Taxes.**

Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Contract.

Prior to beginning Work, Contractor shall furnish the Engineer a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before Work on any particular phase or phases of Work can be started. Copies of the fully executed permits shall be furnished to the Engineer upon request.

An exemption from all Sales Taxes (City, County and State) may be granted for all materials incorporated in the Work. Contractor shall be responsible for making application to Mesa County Finance Director and the Revenue Department, State of Colorado and completing the necessary forms for exemption.

**6. Patented Devices, Materials and Processes.**

If Contractor uses any design, device, material, or process covered by letters of patent or copyright, Contractor shall provide for their use by suitable legal agreement with the patentee or owner. Contractor and the Surety shall indemnify and save harmless County, any affected third party, or political subdivision from any and all claims for infringement resulting from the use of any patented design, device, material or process, or any trademark or copyright, and shall indemnify County for any costs, expenses, and damages which they may be obliged to pay by reason of any infringement, during or after completion of the Contract.

**7. Safety, Health, and Sanitation Provisions.**

Contractor is required to have a company Safety Management Plan meeting the requirements below. A copy of the plan shall be provided when requested by the Engineer. The Project Special Provisions may require a specific safety plan to be submitted for elements of the project.

- (a) *Contractor Responsibilities.* Contractor shall ensure compliance with applicable Federal, State, and local laws, rules, regulations, orders and guidelines governing safety, health and sanitation. Contractor shall provide all safeguards, safety devices, and protective equipment, and shall take all other actions necessary to protect the life, safety, and health of persons working at or visiting the

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project site, and of the public and property in connection with the performance of the Work covered by the Contract. In the case of conflicting requirements, the more stringent of the requirements shall apply. Contractor shall require that all operations and work practices by Contractor, subcontractor, supplier, and County personnel and consultants shall comply with the provisions of the Plan. Contractor shall respond in writing to all safety issues raised by the Engineer.

- (b) *Competent Persons.* Prior to the start of construction, Contractor shall designate at least one competent person for each of the construction activities being completed. A competent person is an individual who, by way of training, experience, or combination thereof, is knowledgeable of applicable standards, is capable of identifying existing and predictable workplace hazards relating to a specific construction activity, is designated by the employer, and has authority to take prompt, appropriate actions. The appropriate competent persons shall be present on the project site at all times during the specific construction activities that require those competent persons.
- (c) *Project Safety & Health Requirements.* All personnel on the project site shall wear the required, appropriate personal protective equipment (PPE) at all time when on the project site, except when in their vehicles or in job trailers. All work vehicles and mobile equipment shall be equipped with one or more functioning flashing, oscillating, or rotating warning lights for warning workers and traffic.
- (d) *Safety Stand-Down.* The Engineer may immediately suspend all or part of any Work in the case of an accident (including property damage), or catastrophe (one or more persons hospitalized in a single incident), or other situation presenting an imminent danger to life or health, such as a near miss, violation of the Plan, or presence of a hazardous situation. In the case of a worksite fatality directly related to Contractor's or any subcontractor's work operations, the safety stand-down shall be mandatory.
- (e) *Regulatory Enforcement Actions.* Contractor shall provide written notifications of all Regulatory agency actions relating to safety to the Engineer.
- (f) *Failure to Comply.* Failure to comply with the requirements of this section shall be grounds for withholding of progress payments, project suspension, or both.
- (g) *Costs.* All costs associated with the preparation and implementation of the Plan and compliance with all safety, health, and sanitation provisions and requirements will not be measured and paid for separately, but shall be included in the Work.

**8. Blasting and Other Hazardous Work.**

Contractor and subcontractors shall do no blasting or other hazardous work without written permission issued by. Before issuance of such permission, County may require evidence of adequate liability insurance coverage secured at Contractor's expense for collapse, explosion, blasting, and damage to underground pipes, wiring, conduits and other structures.

When explosives are utilized in the performance of the Work, Contractor shall not endanger life, property, or new work. Contractor shall be responsible for all damage resulting from the use of explosives.

Contractor's explosives shall be stored in a secure manner in compliance with laws and ordinances, and storage places shall be clearly marked.

**9. Maintaining Traffic.**

Contractor shall conduct the Work to minimize obstruction to traffic. The safety and convenience of the general public and the residents along the roadway and the protection of persons and property shall be provided for by Contractor.

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No street, alley, sidewalk, trail or other public way shall be closed, blocked or obstructed without first obtaining permission from County. In addition to other Project required notices, at least twenty-four (24) hours prior to closing any street or roadway, Contractor shall verbally notify Engineer, County, emergency services, mail delivery, school bus dispatch, and trash collection services of the planned closure and timeframe. Contractor shall also notify all adjacent property owners or residents of Work which will affect access to their property. This notification shall be made one full business day prior to when the Work is scheduled to take place. Notification may be either written or verbal, but should clearly indicate the work schedule and anticipated traffic restrictions and should provide names and phone numbers where a Contractor's Representative and County Engineer will be readily available to answer questions.

Unless otherwise provided, Contractor shall keep the road open to all traffic in accordance with the Traffic Control Plan during the progress of the Work. Unless otherwise allowed by the Contract, Contractor shall schedule construction operations so that only one side of the existing roadbed is denied to traffic at any time. Contractor shall also provide and maintain in a safe condition temporary approaches or crossing and intersections with trails, roads, streets, businesses, parking lots, residences, garages, and farms. The road and the intersections of the access points shall be maintained in a manner that will safely and adequately accommodate traffic.

Contractor shall not store materials or equipment, nor park vehicles, on the roadway except in areas approved by the Engineer. Contractor shall not have materials or equipment in the traffic lanes open to traffic at any time unless directed.

Portions of the roadway that are not included in the contract Work will be maintained by County. Contractor shall be responsible for maintaining all Work that is included in the Contract, and maintaining approaches, crossings, intersections, and other features as may be necessary to accommodate traffic without direct compensation.

During any suspension ordered by the Engineer, Contractor shall open to traffic the portions of the project as directed. Prior to allowing traffic on the project, Contractor shall prepare the roadbed so that it will safely and adequately accommodate traffic. During the suspension period, the maintenance of the roadway will be the responsibility of County. However, when the suspension is the result of a failure by Contractor, all costs for maintenance of traffic during the suspension period shall be borne by Contractor. When the suspension is lifted, Contractor shall renew any work or replace materials lost or damaged on the project and shall remove, as directed, work or materials used during the suspension. Contractor shall complete the project as though the performance of the Work has been continuous and without interference.

If the Engineer directs special maintenance for the benefit of the traveling public, that is not included in the Contract, Contractor will be paid in accordance with item **48. Extra Work**.

**10. Load Restrictions.**

Contractor shall comply with all legal load restrictions in the hauling or equipment or materials on public roads beyond the limits of the project. A special permit will not relieve Contractor of liability for damage resulting from the moving of equipment or material.

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The operation of equipment or hauling loads which cause damage to structures, the roadway or any other construction will not be permitted. Contractor shall be responsible for the repair of all damage and related expense resulting from hauling equipment and construction operation.

If a vehicle's gross weight exceeds the legal limit, and the material transported by the vehicle is delivered to the project, the material will not be accepted.

**11. Opening Sections of Project to Traffic.**

Opening sections of the Work for traffic or other use shall not constitute acceptance of the Work, or provide a waiver of any provision of the Contract. Contractor shall maintain the roadway in a condition equal to or better than the condition of the roadway when it was initially opened to traffic. When applicable, the Contract may specify the time or date on which certain portions of the Work shall be completed to provide for the accommodation of traffic.

The Engineer may order certain portions of the Work opened for traffic, other than specified in the Contract. If the Engineer has not ordered the roadway opened because of unnecessary delay by Contractor, and if no damages occurs other than that which can be attributed to traffic, Contractor will be relieved of all responsibility for maintenance of traffic control devices and damage due to traffic. Any expenses resulting from opening such sections shall be borne by County or Contractor will be compensated for the added expense in accordance with item **48. Extra Work**. If the opening causes changed working conditions, or delays the completion of other items or work on the project, compensation for the added expense and recommendations for additional time will be set forth by a Change Order.

If Contractor is dilatory in completing the Work, the Engineer may order all or a portion of the project to be opened to traffic. In such event, Contractor will not be relieved of the liability and responsibility during the period the Work is so opened prior to final acceptance. Contractor shall conduct the remainder of the construction operations to cause the least obstruction to or interference with traffic. Damage attributed to traffic shall be paid for at Contractor's expense.

Damages not attributable to traffic which might occur on sections opened to traffic shall be repaired at Contractor's expense.

**12. Traffic Control, Street Closures and Detours**

All road closures, lane closures, and other traffic controls shall be set up and maintained in accordance with an approved traffic control plan (TCP) per Mesa County Standard. Construction Specification Section 630. Contractor shall provide all traffic controls as needed for the safe movement of vehicular traffic, pedestrians, and bicyclists through or around the construction work zone and for the protection and safety of all persons and property in and around the work zone. All traffic control devices used shall be in accordance with the latest revision of the "Manual on Uniform Traffic Control Devices" (MUTCD) and the approved TCP.

At least two (2) working days before the Preconstruction meeting, Contractor shall submit to the Engineer a detailed TCP for review. During progress of the Work, if significant adjustments on the TCP are necessary or desirable, Contractor shall submit pertinent proposed revisions in writing to the Engineer for approval at least three (3) working days prior to proposed implementation of the changed plan.

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No Work shall be done until all traffic control devices and barricades are in place. The Engineer or the Inspector shall have the authority to require Contractor to provide additional signs or barricades for those locations it deems to be inadequate.

At times, it may be necessary for Contractor to provide flaggers to direct traffic. All flaggers provided by Contractor shall be certified by the Colorado Department of Transportation or ATSSA and shall be wearing the proper safety attire and using the proper flagging equipment while performing their duties.

Public sidewalks which are under construction or otherwise obstructed shall be properly barricaded at all times. ADA accessible temporary walkways or pedestrian detours shall be provided around obstructed sections of sidewalk.

**13. Protecting and Relocating Utilities.**

Contractor shall comply with Article 1.5 of Title 9, CRS ("Excavation Requirements") when excavation or grading is planned in the area of underground utility facilities. Contractor shall notify all affected utilities at least two (2) business days, not including the day of notification, prior to commencing such operations. Contractor shall contact the Utility Notification Center of Colorado (UNCC) at 811 (or 1-800-922-1987) to have locations of UNCC registered lines marked by member companies. All other underground facilities shall be located by contacting the respective company. Utility service laterals shall also be located prior to beginning excavating or grading.

County shall notify all utility companies, pipe line owners, or other parties affected, and have all necessary adjustments of the public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable. If any part of Contractor's Work depends on the proper execution, or results upon the Work, done by the utility company, Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects or deficiencies in such Work that render it unsuitable for such proper execution and results. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

Water lines, gas lines, wire lines, service connections, meter and valve boxes, light standards, cableways, signals, and all other utility facilities within the limits of the proposed construction are to be relocated or adjusted at the utility owner's expense unless otherwise provided in the Contract. Contractor shall cooperate with the utility owners in their removal and relocation operations, so that progress is expedited, duplication of work is minimized and service interruptions are avoided.

The Contract will indicate those utility items which are to be relocated or adjusted by the utility owner or which are to be relocated or adjusted by Contractor. Contractor shall consider in their bid proposal all of the permanent and temporary utility facilities in their present or relocated positions as shown in the Contract and as revealed by site investigation. Utility delays due to changes which are the responsibility of Contractor will be considered non-excusable delays. Additional compensation will not be allowed for foreseeable coordination, inconvenience, or damage sustained due to interference from the utility facilities or the removal or relocation operations as indicated in the Contract.

Contractor shall be required to meet with each utility owner impacted by the Work in advance of any construction operations to coordinate required utility work with the construction activity. Coordination with utility owners includes, but is not limited to, providing and periodically updating an accurate construction schedule that includes all utility work elements. Surveying and/or staking of utility relocations to be performed by the utility owner shall be the responsibility of the utility owner.

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If utility facilities or appurtenances are found that are neither identified in the Contract, nor revealed by site investigation, the Engineer will determine whether adjustment or relocation of the utility is necessary. The Engineer will make arrangements with either the utility owner or Contractor to accomplish necessary adjustments or relocations when not otherwise provide for in the Contract. Extra work will be considered for payment in accordance with item **48. Extra Work**. Consideration for delays shall be in accordance with item **23. Determination and Extension of Contract Time**.

Where Contractor's operations are adjacent to properties of railroad, telegraph, telephone, power, or other utility companies, to which damage might result in considerable expense, loss, or inconvenience, Work shall not commence until arrangements for protection of the utilities have been made by Contractor.

If water or utility services are interrupted, Contractor shall promptly notify the utility owner and shall cooperate in the restoration of the service. Repair work shall be continuous until the service is restored. Work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

**14. Interruption of Irrigation Water Flow.**

Contractor shall arrange the Work to avoid interference with the flow of irrigation water. If it is impractical to install the structure during the time the ditches are not flowing, Contractor shall make arrangements with the ditch owners regarding temporary interruption of flow or temporary diversion of water. This will require construction of new ditches with appurtenant structures before old ditches or canals are diverted. Contractor shall provide any temporary ditches, canals, structures necessary for the uninterrupted flow of irrigation water. Temporary construction and removal shall be at the expense of Contractor.

**15. Air Quality Control.**

Contractor shall comply with the "Colorado Air Quality Control Act," Title 25, Article 7, CRS and regulations promulgated thereunder.

**16. Water Quality Control.**

Contractor shall comply with the most current versions of the "Colorado Water Quality Control Act" (Title 25, Article 8, CRS), the "Protection of Fishing Streams" (Title 33, Article 5, CRS), the "Clean Water Act" (33 CRS 1344) regulations promulgated, certification or permits issued, and to the requirements listed below. In the event of conflicts between these requirements and water quality control laws, rules, or regulations of other Federal, or State agencies, the more restrictive laws, rules, or regulations shall apply.

The Contractor shall conduct the work in a manner that prevents pollution of any adjacent State waters. Erosion control work shall be performed in accordance with Section 208 of the Mesa County Standard Construction Specifications, this item, and all other applicable parts of the Contract.

If construction activities result in noncompliance of any permit requirement, the project will be suspended and the permitting agency notified, if required. The project will remain suspended until the Engineer received written approval by the permitting agency.

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Prior to construction, the Contractor shall submit a Spill Response Plan for any petroleum products, chemicals, solvents, or other hazardous materials in use, or in storage, at the work site. See Section 208 of Spill Response Plan requirements. Work shall not be started until the plan has been submitted to and approved by the Engineer.

The Contractor shall obtain a Construction Dewatering (CDW) Permit from CDPHE anytime uncontaminated groundwater, including groundwater that is commingled with stormwater or surface water, is encountered during construction activities and the groundwater or commingled water needs to be discharged to State waters. If contaminated groundwater is encountered, a Remediation permit may be needed from CDPHE.

Water from dewatering operations shall not be directly discharged into any State waters, unless allowed by permit. Water from dewatering shall not be discharged into a ditch unless:

- A. Written permission is obtained from the owner of the ditch.
- B. It is covered in the approved CDW or Remediation Permit that allows the discharge.
- C. A copy of this approval is submitted to the Engineer. A copy of the Permit shall be submitted to the Engineer prior to dewatering operations commencing.

Construction dewatering may be discharged to the ground of projects where CDPHE's Low Risk Guidance Document for Discharges of Uncontaminated Groundwater to Land are met.

If surface waters are diverted around a construction area and no pollutants are introduced during the diversion, a CDW Permit is not required. If the diverted water enters the construction area and contacts pollutant sources (e.g. disturbed soil, concrete washout, etc.) the Contractor shall obtain a CDW permit for the discharge of this water to State waters or to the ground.

Temporary fill into wetlands or streams shall not be allowed, except as specified in the Contract and permits. If such work is allowed, upon completion of the work all temporary fills shall be removed in their entirety and disposed of in an upland location outside of flood plains unless otherwise specified in the Contract.

Construction operations in waters of the United States as defined in 33 CFR Part 328.3, including wetlands, shall be restricted to areas and activities authorized by the U.S. Army Corps of Engineers as shown in the Contract. Foraging waters shall be allowed only as authorized by the U.S. Army Corps of Engineers 404 Permit. Wetland areas outside of the permitted limits of disturbance shall not be used for storage, parking, waste disposal, access, borrow material, or any other construction support activity.

Pollutant byproducts of highway construction, such as concrete, asphalt, solids, sludges, pollutants removed in the course of treatment of wastewater, excavation or excess fill material, and material from sediment traps shall be handled, stockpiled, and disposed of in a manner that prevents entry into State waters, including wetlands. Removal of concrete waste and washout water from mixer trucks, concrete finishing tools, concrete saw, and all concrete material removed in the course of construction operations or cleaning shall be performed in a manner that prevents waste material from entering State waters and shall not leave the site as surface runoff.

All materials stored on-site shall be stored in a neat, orderly manner, in their original containers, with the original manufacturer's label. Materials shall not be stored in a location where they may be carried into State waters at any time.

Spill prevention and containment measures conforming to Section 208 shall be used at storage, and equipment fueling and servicing areas to prevent the pollution of any State waters, including wetlands. All spills shall be cleaned up immediately after discovery, or contained until appropriate cleanup methods

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can be employed. Manufacturer's recommended methods for spill cleanup shall be followed, along with proper disposal methods. When required by the Colorado Water Quality Control Act, Regulation 5 CCR 1002-61, spills shall be reported to the Engineer and CDPHE in writing.

All construction site wastes shall be properly managed to prevent potential pollution of State waters. Construction waste that is considered a pollutant or contaminant shall be collected and disposed of in appropriate containers. This material may be stockpiled on the project when it is contained or protected by an appropriate control measure.

The Contractor shall be liable for any penalty (including monetary fines) applied to the County caused by the Contractor's noncompliance with any water quality permit or certification. Monetary fines shall be deducted from any money due to the Contractor. If the monetary fine is in excess of all the money due to the Contractor, then the Contractor shall pay to the County the amount of such excess.

**17. Archaeological and Paleontological Discoveries.**

When Contractor's operations encounter plant or animal fossils, remains of prehistoric or historic structures, prehistoric or historic artifacts (bottle dumps, charcoal from subsurface hearths, old pottery, potsherds, stone tools, arrowheads, etc.), Contractor's affected operations shall immediately cease. Contractor shall immediately notify the Engineer of the discovery of these materials. When ordered to proceed, Contractor shall conduct operations as directed. Additional work will be paid for by County as provided in item **45. Differing Site Conditions** when contract unit prices exist, or as extra work as provided in item **48. Extra Work** when no unit prices exist. Delays to Contractor because of materials encountered may be cause for extension of time in accordance with item **23. Determination and Extension of Contract Time**.

**III. INTERPRETATION OF CONTRACT DOCUMENTS.**

**18. Intent of Contract.**

The intent of the Contract is to provide for the construction and completion, in every detail, of the Work described in the Contract Documents. Contractor shall complete the Work described and furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the Work in accordance with the Contract. Alterations of plans or the nature of the Work will not involve or require Work beyond the limits of the original project, until a change order has been executed.

Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer and they shall not reuse any of them on extensions of the Project or any other project without written consent of County and Engineer and specific written verification or adaptation by Engineer.

**19. Subletting of Contract.**

Contractor shall not sublet, sell, transfer, assign or dispose of the Contract or Contracts without the prior express written consent of County, and any attempt to sublet, sell, transfer, or assign the Contract without prior express written consent of County shall render the Contract null and void with respect to the attempted sublettee, purchaser, transferee or assignee. Any subcontract work shall not begin until Contractor has received County's written permission. Contractor shall make all project related written subcontracts, Contracts, and purchase orders available to the Engineer for viewing, upon request and at a location convenient to the Engineer.



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If Contractor is allowed to sublet a portion of the Contract, Contractor's organization shall perform Work amounting to 30 percent or more of the total original contract amount. Any items designated in the Contract as "specialty items" may be performed by subcontract. The cost of "specialty items" so performed by subcontract may be deducted from the total of the original contract amount before computing the amount of work required to be performed by Contractor's own organization. The original contract amount includes the cost of materials and manufactured products which are to be purchased or produced by Contractor and the actual agreement amounts between Contractor and subcontractor. Proportional value of a subcontracted partial contract item will be verified by the Engineer. When a firm both sells material to a prime contractor and performs the work of incorporating the materials into the project, these two phases shall be considered in combination and as constituting a single subcontract. The calculation of the percentage of subcontracted work shall be based on subcontract unit prices.

Subcontracts or transfer of Contract shall not release Contractor of liability under the Contract and Bond.

**20. Conformity to the Contract.**

All Work performed and all materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.

For those items of Work where working tolerances are not specified, Contractor shall perform the Work in a manner consistent with reasonable and customary manufacturing and construction practices. When the Engineer finds that the materials furnished, the Work performed, or the finished product does not conform with the Contract but that reasonably acceptable Work has been produced, the Engineer will determine the extent the Work will be accepted and remain in place. If accepted, the Engineer will (1) document the basis for acceptance by Change Order which will provide for an appropriate reduction in the Contract price for such work or materials not otherwise provided for in the subsection, or (2) in lieu of a price reduction, permit correction or replacement of the finished product provided the correction or replacement does not adversely affect the Work.

When the Engineer finds the materials furnished, Work performed, or the finished product are not in conformity with the Contract and has resulted in an inferior product, the Work or materials shall be removed and replaced with specification material at the expense of Contractor.

**21. Coordination of Contract Documents.**

These general contract conditions, the specifications, the plans, special provisions, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. The project specifications and Construction Drawings are intended to supplement, but not necessarily duplicate each other, and together constitute one complete set of drawings and specifications, so that any Work exhibited in one and not in the other shall be executed as if it had been set forth in both, in order that the Work shall be completed according to the complete design as decided and determined by County. Should anything be omitted from the Construction Drawings and Specifications which is necessary for a clear understanding of the Work or should it appear that various instructions are in conflict, then Contractor shall secure written clarification or instructions from County before proceeding with the construction affected by such omission or discrepancies.

In case of any conflict, inconsistency or discrepancy among the Contract Documents, the requirement defining or describing the higher quality work or performance shall control. If the conflict, inconsistency or discrepancy cannot be resolved by the application of that rule, the Contract Documents shall be given precedence in the following order: Contract and Notice to Proceed, General Contract Conditions, Change

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Orders, Addenda, Project Plans, Project Special Provisions, Standard Plans, and Standard Specifications. Figure dimensions on Drawings shall govern over scaled dimensions. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for.

**22. Estimated Quantities in Bid Schedule.**

The quantities noted in the Bid Schedule are estimates prepared for the comparison of bids. Payment to Contractor will be made only for the actual quantities of Work performed and accepted, unless the specifications do not require the quantities of Work performed to be measured.

The estimated quantities of Work to be performed and materials to be furnished may be increased, decreased, or omitted.

**23. Determination and Extension of Contract Time.**

The Contract time or Completion Date is stated in the Contract and Project Special Provisions.

Contractor shall not carry on construction operations of Saturdays, Sundays, or holidays unless previously arranged and approved. Contractor shall only make emergency repairs, and provide proper protection of the Work and traveling public on these days.

No work, other than preparation and clean-up, shall be done outside the hours of 7:00am and 4:00pm without the approval of County, unless otherwise required by the Project Special Provisions.

- (a) *Working Day Contract.* When the Work is on a working day basis, one whole day of contract time will be assessed for each working day on which the Work can be effectively prosecuted during six hours or more of the day. One-half day will be assessed for each working day on which the Work can be effectively prosecuted for at least two hours but less than six hours of the day. Contract time will not be assessed when the Work can be effectively prosecuted for less than two hours. Saturdays, Sundays, and holidays will not be assessed as work days when Contractor utilizes such days for performance of the Work. When substantial completion has been made by the Engineer as described in Item **57. Acceptance**, the daily time charges will cease.
- (b) *Completion Date Contract.* When the Contract specifies a completion date, all Work under the Contract shall be completed on or before the date. No extension of the completion date will be allowed for inclement weather, foreseeable causes, or conditions under the control of Contractor.
- (c) *Delay.* A delay is any event, action or factor that extends the performance period of Contract, as defined below:
  - 1. *Excusable Delay.* A delay beyond Contractor's control and was not due to Contractor's fault or negligence. County may grant a time extension for an excusable delay.
    - A. *Compensable Delay.* A delay that County, not Contractor, is responsible for entitling Contractor to a time extension and monetary compensation as stated below.
    - B. *Non-compensable Delay.* An excusable delay that neither Contractor nor County is responsible for that may entitle Contractor to a time extension but no additional monetary compensation. Contract time allowed for performance of the Work may be extended for delays due to force majeure (i.e. act of God, acts of the public enemy, pandemics, terrorist acts, fires, floods, area wide strikes, embargoes, or unusually severe weather).

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2. *Non-excusable Delay.* A delay that was reasonable foreseeable or within the control of Contractor for which County will not grant monetary compensation or contract time extension.
3. *Concurrent Delay.* Independent delays to critical activities occurring at the same time.
  - A. County will not grant a time extension or additional compensation for the period of time that a non-excusable delay is concurrent with an excusable delay.
  - B. County may grant time but no compensation for the period of time that a non-compensable delay is concurrent with a compensable delay.

Delays in delivery of materials or fabrication scheduling resulting from late ordering, financial considerations, or other causes that could have been foreseen or prevented will be considered non-excusable delays. However, delays caused by fuel shortage or delay in delivery of materials to Contractor due to some unusual market condition caused by industry-wide strike, national disaster, area-wide shortage, or other reasons beyond the control of Contractor which prevent procurement of materials or fuel within the allowable contract time limits will be considered excusable delays.

Contractor's assertion that insufficient contract time was specified is not a valid reason for an extension of contract time.

When the Engineer grants a contract time extension, the revised Contract Completion date will be in effect as though it were the original contract date.

- (d) *Extension of Contract Time.* Contractor shall orally notify the Engineer as soon as Contractor recognizes a potential project delay. Contractor shall provide a written notice of delay within seven days of determining the need for additional contract time. The notice of delay shall describe the nature and specific cause of the delay. Failure to submit the written notice of delay within seven days constitutes a waiver of entitlement to additional time or compensation.

Contractor shall submit the time extension request and supporting analysis within 30 days of the written delay notice. The request shall include a schedule analysis with all information needed to support the time extension request. The analyses shall show a delay to the critical path in order to obtain a contract time extension. Contractor shall demonstrate that efforts were made to avoid the delay by resequencing the Work or by using other reasonable alternatives. Failure to submit the documentation to support the time extension request within 30 days of Contractor's written notice of delay constitutes a waiver of entitlement to additional time or compensation.

**24. Failure to Complete Work on Time.**

A daily charge will be made against Contractor for each calendar day, including free time, which any Work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due Contractor. This deduction will not be considered a penalty, but as liquidated damages.

The schedule of liquidated damages set forth below is an amount, agreed to by Contractor and County, as reasonably representing additional construction engineering costs incurred by County if Contractor fails to complete the performance within the contract time.

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The schedule of liquidated damages will be:

<b>Original Contract Amount (\$)</b>		<b>Liquidated Damages per Calenday Day (\$)</b>
<b>From More Than</b>	<b>To And Including</b>	
0	500,000	800
500,000	1,000,000	1,600
1,000,000	2,000,000	2,200
2,000,000	5,000,000	3,200
5,000,000	15,000,000	5,400
15,000,000	-----	9,800

Due account shall be taken of any adjustment of the contract time for completion of the Work granted under the provisions of Item **23. Determination and Extension of Contract Time.**

Permitting Contractor to continue and finish the Work or any part thereof after elapse of contract time will not operate as a waiver on the part of County of any its rights under the Contract.

Deductions assessed as liquidated damages under this subsection shall not relieve Contractor from liability for any damages or costs resulting from delays to other contractors on the Project or other projects caused by a failure of the assessed Contractor to complete the Work according to contract time.

**IV. CONTRACTOR'S RESPONSIBILITY**

**25. Contractor's Responsibility for Work.**

Contractor shall be responsible for and protect the contract Work against injury or damage from all causes whether arising from the execution or non-execution of the Work, including but not limited to action of the elements, traffic, fire, theft, vandalism, or third party negligence, until final written acceptance of the project by the Engineer. Contractor shall rebuild, repair, restore, or replace all contract Work that is injured or damaged prior to final written acceptance at no cost to County.

The Engineer may, in writing, relieve Contractor of expenses for damage to certain portions of the contract work caused by traffic or the action of the elements. All Work on the portion of contract Work being considered must be complete under terms of the Contract except for seeding, mulching, landscape items, and final clean-up.

Loss, injury, or damage to the contract Work due to unforeseeable causes beyond the control of Contractor, including but not limited to acts of God, such as earthquake, flood, tornado, high winds, or other cataclysmic phenomenon of nature, or acts of public enemy or of governmental authorities, shall be restored by Contractor under the provisions of item **48. Extra Work.**

During periods that Work is suspended, Contractor shall be responsible for the Work under the Contract and shall prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During the suspension period, Contractor shall maintain in a growing condition all newly established plantings, seedings, and soddings furnished under the Contract, and shall protect new tree growth and other vegetative growth against injury.

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**26. Cooperation of Contractor.**

Contractor shall give the Work the constant attention necessary to facilitate progress and shall cooperate with the Engineers, inspectors, and other contractors.

Contractor shall have on the project, at all times that Work is being performed, a competent superintendent capable of reading and understanding the contract documents and experienced in the type of Work being performed. The superintendent will receive instructions from the Engineer and shall be authorized to act for Contractor on the project and to execute orders or directions of the Engineer without delay. The superintendent shall promptly supply, irrespective of the amount of work sublet, materials, equipment, tools, labor, and incidentals to complete the Contract.

In the event Contractor desires to change the Project Superintendent and/or Project Manager (key personnel) during the contract period, Contractor must submit for prior approval a written request demonstrating the extraordinary circumstances and providing: local availability of the substituted key personnel; professional qualifications; related project experience; and, current and future commitments. In addition, if for whatever reason, a key personnel is deemed unsuitable or a hindrance to the cooperative completion of the Project, at the written request by the Engineer, Contractor shall remove that person from Contractor's construction team.

**27. Notice to Proceed.**

Contractor shall not commence Work prior to the issuance of a Notice to Proceed. The "Notice to Proceed" will stipulate the date on which contract time commences. When Contractor proceeds with work prior to that date, contract time will commence on the date Work actually begins.

**28. Schedules**

At, or prior to, the Pre-construction Conference, Contractor shall submit to the Engineer for review, a tentative construction schedule. Contractor shall use Microsoft Project software, or other software approved by the Engineer, to develop and manage a critical path method project schedule to plan, schedule, and report progress of the Work. Contractor's schedule shall be an accurate plan to complete the Work so that County can use the schedule to evaluate progress, schedule County resources, inform the Project stakeholders, and evaluate the effect of changes to the schedule.

Contractor shall submit a monthly update as either a Project Schedule Update or Revised Schedule as determined by the Engineer. The Engineer may not issue a monthly progress payment if the Engineer has not received an update.

Contractor shall use activity descriptions that ensure the Work is easily identifiable. Contractor shall show the no-work days in the schedule calendar. The contract completion date shall be included as an activity. The critical path for the project shall be shown on the schedule.

Contractor shall use durations for individual construction activities that do not exceed 15 days of Work unless approved by the Engineer. Contractor may group a series of activities with an aggregate duration of five work days or less into a single activity. Non-construction activities may have durations exceeding 15 days of Work, as approved by the Engineer.

Contractor shall not use the following unless approved by the Engineer:

- (1) Negative lags.
- (2) Lags in excess of 10 working days.
- (3) Start-to-finish relationships.

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- (4) Open-ended activities.  
(5) Constraints.

The Project Schedule shall show all activities required by all parties to complete the Work. Contractors, its subcontractors, suppliers, and engineers, shall perform the Work according to the approved Project Schedule.

Approval of the Project Schedule shall not relieve Contractor of any contract requirements including the requirement to complete all Work within the Contract Time. Contractual requirements shall not change by submission or approval of a schedule, unless specifically amended by a Change Order.

At the weekly project meeting, Contractor shall submit, in writing, a Weekly Planning Schedule that shows Contractor's and all Subcontractor's planned activities for a minimum of two weeks immediately following the date of submittal. The Weekly Planning Schedule shall be based on the Project Schedule.

All costs relating to the requirements of this section will not be paid for separately, but shall be included in the Work.

**29. Shop Drawings.**

All Work shall be performed in accordance with the plans, reviewed shop drawings, and other submittals. Specific requirements for the required shop drawings and other submittals for this project are contained in the specifications.

Contractor shall be responsible for the accuracy of all dimensions and quantities shown on the shop drawings, working drawings, and other submittals. Contractor shall correlate all information in the Contract, in the submittals, and in all revisions at the project site to insure that there are no conflicts and that the Work can be constructed as shown. Contractor shall be responsible for all information that pertains to the fabrication processes and methods of construction.

Contractor shall provide shop drawings to adequately control the Work or supplement the plans with working drawings to detail the construction or to provide the Engineer with information on the proposed methods of construction. Contractor shall submit shop drawings to the Engineer for review sufficiently in advance of construction to allow ample time for reviewing, correcting, resubmitting and rechecking to avoid any delay in progress to the Work. Contractor shall notify the Engineer, in writing, at the time of submittal of shop drawings, working drawings, and other submittals, of any information submitted that deviates from the requirements of the plans and specifications. In addition, specific notation of the deviations or changes from the plans and specifications shall be placed on the submittal.

The Engineer will review the shop drawings to evaluate that general conformance with the design concept and that general compliance with the information given in the plans and specifications has been achieved. The review does not extend to accuracy of dimensions, means, methods, techniques, sequences, procedures of construction, or to safety precautions. The review by the Engineer is not a complete check. Review of the shop drawings does not relieve Contractor of responsibility for the correctness of the shop drawings. All Work done prior to the Engineer's review of shop drawings shall be at Contractor's sole risk.

The Engineer may request additional details and require Contractor to make changes in the shop drawings which are necessary to conform to the provisions and intent of the plans and specifications without additional cost to County.

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**30. Record Drawings.**

In accordance with Mesa County Std. Construction Specification Section 625, Contractor shall keep one set of plans, reviewed shop drawings, and other submittals available on the project site at all times. This set shall be defined as the “construction drawings.” Contractor shall note on these construction drawings all changes and deviations from the Work shown on the plans, shop drawings, and other submittals. The construction drawings shall be kept current as the Work progresses. Upon completion of the Work and prior to final payment, the construction drawings shall be stamped “As-Built” or “As-Constructed”, signed by Contractor, and submitted to the Engineer.

**31. Character of Workers; Methods and Equipment.**

Contractor shall employ resources for completing Work to full completion in the manner and time required by the Contract.

All workers shall have skill and experience to perform the Work assigned them.

Any person employed by Contractor or by any subcontractor who does not perform the work in a proper and skillful manner shall, at the written request of the Engineer, be removed by Contractor or subcontractor and shall not be employed on the project without the approval of the Engineer.

Should Contractor fail to remove this person or persons or fail to furnish skilled and experienced personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until compliance is achieved.

All equipment used on the project shall be of size and mechanical condition to meet requirements of the Work and to produce a satisfactory quality of Work. Equipment used shall not cause injury to the [project site](#), roadway, or adjacent property.

When the methods and equipment to be used are not prescribed in the Contract, Contractor shall use methods or equipment that will accomplish the contract Work in conformity with the contract requirements.

When the methods and equipment to be used are specified in the Contract, other methods and equipment shall not be used in the performance of the Work unless Contractor received written authorization from the Engineer.

If Contractor desires to use a method or equipment other than specified in the Contract, Contractor may request approval from the Engineer. The request shall include a full description of the methods and equipment proposed to be used and Contractor’s explanation for the proposed change. Contractor will be fully responsible for producing Work in conformity with contract requirements. If the substituted methods or equipment do not produce results conforming to contract requirements, Contractor shall completed the remaining construction with the originally specified methods and equipment. Deficient Work shall be removed, repaired, or replaced to conform to the specified quality by and at Contractor’s expense. No increase will be made in the basis of payment for the construction items involved nor in contract time when a change in methods or equipment is authorized.

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**32. Workplace Violence.**

If a representative or employee of Contractor, or a subcontractor, commits an act of workplace violence on the project, he shall be sanctioned as provided by Contractor's employment policies and, where appropriate, shall be reported to law enforcement authorities. At the request of either Contractor or the Engineer, the Engineer and Contractor shall meet to discuss appropriate actions to be taken against the representative or employee. Appropriate action may include removing the representative or employee from the project. If removal is warranted and Contractor fails to remove the representative or employee, the Engineer may suspend the Work by written notice until compliance is achieved.

**33. Maintenance During Construction.**

Contractor shall maintain all Work that is included in the Contract during construction and until final written acceptance, except as otherwise specified in item **25. Contractor's Responsibility for Work.** This maintenance shall constitute continuous and effective Work performed with adequate equipment and forces so the roadway or structures are kept in satisfactory conditions at all times.

If the Contract involved the placement of material on or utilization of, a previously constructed subgrade, pavement structure or structure, Contractor shall maintain the previously constructed Work during all construction operations.

All cost of maintaining the contract Work during construction and before final written acceptance will not be paid for separately, but shall be included in the Work.

If Contractor fails to maintain the Work, the Engineer will immediately notify Contractor of such noncompliance. Except in the case of traffic signal maintenance, Contractor shall respond and remedy the unsatisfactory maintenance within 24 hours after receipt of such notice. If Contractor fails to remedy unsatisfactory maintenance in the allotted time, the Engineer may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from the monies due or to become due to Contractor on the Contract.

In the case of traffic signal maintenance, Contractor shall respond and remedy unsatisfactory maintenance within one hour of receipt of notice on urban roadways, and within four hours of receipt of notice on rural roadways.

Traffic signal maintenance shall include all approved traffic control items and Work that are required to maintain traffic through the affected area while the traffic signal is being repaired or replaced. If County performs traffic signal maintenance, County shall be held harmless for all subsequent occurrences of maintenance to the signals that County maintained.

**34. Removal of Unacceptable Work and Unauthorized Work.**

Unacceptable Work is Work that does not conform to the requirements of the Contract. Unacceptable Work, resulting for any cause, found to exist prior to the final acceptance of the Work, shall be removed and replaced in an acceptable manner at Contractor's expense. The fact that the Engineer or an inspector may have overlooked the unacceptable Work shall not constitute an acceptance of any part of the Work.

Unauthorized Work is Work that was done without adequate lines and grades having been established by the Engineer or by Contractor, Work done contrary to the instructions of the Engineer, Work done beyond the lines shown on the plans, or extra Work done without the Engineer's authorization. Unauthorized Work will not be paid for under the provisions of the Contract, and may be ordered removed or replaced



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at Contractor's expense.

If Contractor fails within a reasonable time after written notice of Engineer to comply with any order of the Engineer made under the provision of this item, the Engineer may, after seven (7) days' written notice to Contractor, cause unacceptable Work to be remedied or removed and replaced, and unauthorized Work to be removed. To the extent necessary to complete corrective and remedial action, County may exclude Contractor from all or part of the site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which County has paid Contractor but which are stored elsewhere. Contractor shall allow County, Engineer, agents and employees such access to the site as may be necessary to enable County to exercise their rights under this paragraph. All direct and indirect costs of County in exercising such rights shall be charged against Contractor under an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitations, compensation for additional professional services required and all costs for repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by County of County's rights hereunder.

**35. Work by Others.**

County reserves the right to contract for and perform other or additional work on or near the Work covered by the Contract.

When separate contracts are let within the project limits of any one project, each Contractor shall conduct the Work without interfering or hindering the progress or completion of Work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume liability, financial or otherwise, in connection with the Contract and shall protect and save harmless County from any and all damages or claims that may arise because of inconvenience, delay, or loss because of the presence and operations of Contractors working within the limits of the same or adjacent project.

An individual, firm, or corporation may be issued a permit to construct or reconstruct a utility service. Contractor shall allow permit holders to perform permitted Work. Contractor shall make necessary repairs resulting from this Work, as directed. The repairs will be paid for as extra work in accordance with item **48. Extra Work**.

If any part of Contractor's Work depends on the proper execution or results upon the Work of any such other contractor or utility service company, Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects or deficiencies in such Work that render it unsuitable for such proper execution and results. Contractor's failure to so report shall constitute an acceptance of the other Work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other Work.

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**36. Protection and Restoration of Property and Landscape.**

Contractor shall preserve private and public property and protect it from damage. Land monuments and property marks shall not be disturbed or moved until their location has been witnessed or referenced in accordance with required survey practices and their removal approved.

Contractor shall be responsible for damage or injury to property resulting from:

- (1) Contractor's neglect, misconduct, or omission in the manner or method of execution or non-execution of the Work, or
- (2) Contractor's defective Work or the use of unacceptable materials.

Contractor's responsibility shall not be released until the Work has been completed and accepted in compliance with the Contract. Contractor shall restore damaged or injured property, at Contractor's expense, to a condition similar or equal to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.

Existing trees, shrubs, bushes, grasses, outside the designated Work areas but inside the project limits that are damaged due to Contractor's operations shall be replaced in kind at Contractor's expense.

**37. Cleaning Up.**

During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by County. Before final acceptance, Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents and all ground occupied by Contractor in connection with the project. The cost of cleanup will not be paid for separately but shall be included in the Work.

Contractor shall conduct his operations so as not to have equipment tracking excessive amounts of mud and earth onto the adjacent streets. Upon notification by the Engineer, Contractor shall clean up from public streets, earth tracked by his equipment or that of subcontractors and material suppliers to the project.

**38. Construction Stakes, Lines and Grades.**

The Engineer will provide the initial survey control data. All construction surveying, as well as field verification of the survey monuments and control points, will be the responsibility of Contractor. All Work done under this Contract shall be done to the lines, grades and elevations shown on the plans or established by the Engineer. Any Work done without being properly located by reference to established monuments, benchmarks, or other basis reference points which have been located, established or checked by County may be ordered removed and replaced at Contractor's expense

Contractor shall furnish and set construction stakes establishing lines and grades in accordance with the project specifications. Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grade, location or construction operations, and shall be responsible for replacement or relocation of reference points by professionally qualified personnel.

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**V. COUNTY'S RESPONSIBILITIES**

**39. Availability of Lands.**

County will be responsible for securing all necessary land and rights of way in advance of construction. Any exceptions will be indicated in the Contract.

Contractor shall be responsible for obtaining in writing, permission to use private property (not provided by County) for storage of materials and equipment. Copies of these agreements shall be submitted to the Construction Manager.

Nothing herein contained and nothing marked on the drawings shall be interpreted as giving Contractor exclusive occupancy of the land and rights of way, provided by County. County and its employees for any purpose, and other contractors of County for any purpose required by their respective contracts, may enter upon or occupy portions of the land furnished by County. No such joint occupancy or use of the land shall be made the basis of any claim for delays or damages.

**40. Authority of the Engineer.**

The Public Works Director will designate a representative during the construction period. The Engineer or authorized representatives are acting solely as agents and representatives of County when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of County.

The duties, responsibilities, limitations and authority of the Engineer during the construction period are set forth in the following and shall not be extended without written consent of County.

The Engineer will decide all questions regarding the quality and acceptability of materials furnished, Work performed, and the rate of progress of the Work; all interpretation of the plans and specifications; and the acceptable fulfillment of the Contract.

The Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

The Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such visits and on-site observations, the Engineer will endeavor to guard County against defects and deficiencies in the Work, however, such visits shall not relieve Contractor from liability to fulfill this Contract and to perform Work in an appropriate workman like manner conforming with industry standards.

The Engineer will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work as provided in item **46. Inspection and Testing of Work**, whether or not the Work is fabricated, installed or completed.

The Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will

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not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractors, or of any other persons at the site or otherwise performing any of the Work.

The Engineer will, in writing, suspend the Work, wholly or in part:

- (1) For failure of Contractor to correct conditions unsafe for the workmen or the general public.
- (2) For failure to carry out Contract provisions.
- (3) For failure to carry out orders.
- (4) For periods of unsuitable weather.
- (5) For conditions unsuitable for the performance of the Work.
- (6) For any other conditions or reason determined to be in the public interest.

**41. Notification.** Whenever any provision of the Contract Documents requires County to give written notice to Contractor, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for Contractor, or if delivered or sent by registered or certified mail, postage prepaid, to the addresses as shown on Bid or to the last business address known to Contractor, or if delivered electronically to the individual or to a member of the firm. Whenever any provision of the Contract Document requires Contractor to give written notice to County it shall be deemed to have been validly given if delivered in person or electronically to the Engineer, as stated in the Instructions to Bidders, or if delivered at or sent electronically, or by registered or certified mail, postage prepaid, to Mesa County. Contractor or County may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

**42. Authority and Duties of Inspectors.**

Inspectors employed by County, or the Engineer, are authorized to inspect all Work done and materials furnished. This inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of materials to be used. The Inspector is not authorized to alter or waive the provisions of the Contract, unless authorized by the Engineer. The Inspector is not authorized to issue instructions contrary to the provisions of the Contract or to act as foreman for Contractor.

**43. Inspection and Testing of Work.**

All materials and each part or detail of the Work shall be subject to inspection by the Engineer and/or Inspector. The Engineer and Inspector shall be allowed access to all parts of the Work and shall be furnished with information and assistance by Contractor as required to make a complete and detailed inspection.

Before final acceptance of the Work, Contractor shall remove or uncover such portions of the finished Work, as directed. After examination, by the Engineer, Contractor shall restore the Work to the standard required by the Contract. If the Work thus exposed or examined proves acceptable, the uncovering, removing, or restoring the Work will be paid for as extra work. If the Work exposed or examined proved unacceptable, the uncovering, removing, or restoring the Work shall be at Contractor's expense.

Any Work done or materials used without inspection by an authorized County representative may be ordered uncovered, removed, or restored at Contractor's expense.

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All inspections and all tests conducted by County are for the convenience and benefit of County. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and County may reject or accept any Work or materials at any time prior to item **61. Acceptance** whether or not previous inspections or tests were conducted by the Engineer or authorized representative.

**44. Preconstruction Meeting.**

Before Contractor begins the Work, County will schedule and conduct a pre-construction meeting. At the Preconstruction Meeting, Contractor shall name its Project Manager and Superintendent, be prepared to discuss the project construction schedule, traffic control plan and other project related issues, coordination of Work activities and schedules to accommodate any utility relocations that may be required, establish procedures for the request of partial payments and for preparing/reviewing shop drawings and other submittal. Key subcontractors may be required to attend the meeting also.

**VI. CHANGES IN WORK OR CONTRACT PRICE**

**45. Differing Site Conditions.**

During progress of Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected Work is performed.

Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the Work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify Contractor of the determination whether or not an adjustment of the Contract is warranted. No Contract adjustment which results in a benefit to Contractor will be allowed unless Contractor has provided the required written notice.

**46. Suspensions of Work Ordered by the Engineer.**

If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and Contractor believes that additional compensation, contract time, or both are due as a result of such suspension or delay, Contractor shall submit to the Engineer in writing a request for adjustment within fifteen calendar days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate Contractor's request. If the Engineer agrees that the cost, time required, or both for the performance of the Contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of Contractor, its suppliers, or subcontractors, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Engineer will notify Contractor of the determination whether or not an adjustment of the Contract is warranted. No Contract adjustment will be allowed unless Contractor has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been

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suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

**47. Significant Changes in the Character of Work.**

The Engineer reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract or release the surety, and Contractor agrees to perform the Work as altered. These changes may be accomplished by a Field Order and shall be binding on County and Contractor who shall perform the change promptly.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work, or by affecting other Work to cause such other Work to become significantly different in character, an adjustment, excluding loss of anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract. The term “significant change” shall be construed to apply only to the following circumstances:

- (1) When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed constructions, or
- (2) When a major item of Work is increased in excess of 125 percent or decreased below 75 percent of the original quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of Work performed. A major item is defined to be any item having an original contract value in excess of 10 percent of the original contract amount.

**48. Extra Work.**

Contractor shall perform unforeseen Work, for which there is no price included in the Contract, whenever the extra Work is necessary or desirable for contract completion. This Work shall be performed in accordance with the Contract and as directed, and will be paid for as provided under item **50. Compensation for Changes and Time & Material Work.**

Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in item **25. Contractor’s Responsibility for Work.**

**49. Compensation for Altered Quantities.**

When the accepted quantities of Work vary from the quantities in the Contract, Contractor shall accept as payment in full payment at the original contract unit prices for the accepted quantities of Work done. Allowance will not be made except as provided in item **47. Significant Changes in the Character of Work**, for any increase expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by Contractor resulting either directly from such alterations or indirectly from unbalanced allocation of overhead expense among the contract items or from any other cause.

If any such alteration directly causes the loss of any Work or materials already furnished by Contractor

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under the terms of the original contract, reimbursement for such Work or of salvaging such materials will be at actual cost. Any such materials may, at the option of County, be purchased at the actual cost to Contractor, as evidenced by certified invoices.

Should any items contained in the Contract be found unnecessary for the proper completion of the Work, the item may be eliminated. Such action will not invalidate the Contract. Contractor will be reimbursed for actual Work done and all costs incurred, including mobilization of materials and equipment prior to the elimination of the items.

**50. Compensation for Changes and Time & Material Work.**

Differing site conditions, changes, and extra Work performed under Section VII will be paid for as stipulated in the order authorizing the Work. Compensation will be at unit prices or lump sum, or County may require Contractor to do the Work on a time and material (T&M) basis to be compensated in the following manner:

- (a) *Labor.* For all labor and foremen in direct charge of the specific operations, Contractor will receive the actual rate of wage normally paid for each and every hour that the labor and foremen are actually engaged in the Work, as documented by certified payrolls. Contractor will receive the actual costs paid to, or in behalf of, workers because of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when the amounts are required by a collective bargaining agreement or other employment contract or generally applicable to the classes of labor employed on the Work.

An amount equal to 67 percent of the actual wages and fringe benefits paid directly to the employees will also be paid to Contractor. This 67 percent will not be applied to subsistence, travel allowance, or to fringe benefits paid to a third party or a trustee.

- (b) *Materials.* For materials accepted by the Engineer and incorporated in the Work, Contractor shall receive the actual cost of such materials, including transportation charges paid (exclusive of equipment rentals as hereinafter set forth), to which 15 percent will be added.
- (c) *Owned or Leased Equipment.* For the use of any machinery or equipment, approved by the Engineer, which is owned or leased directly by Contractor or subcontractors, or by entities that are divisions, affiliates, subsidiaries or in any other way related to Contractor or subcontractors or their parent companies, Contractor will be paid in the manner hereinafter specified. Rental rates will be from the current edition of the Rental Rate Blue Book for Construction Equipment and will be used as follows:

1. Determination of the rental rate to be used will be as follows:

Hourly rate:  $RR = (ADJ\ BB/176)(RF)+EOC$   
Standby rate:  $SR = (ADJ\ BB/176)(RF)(0.5)$

Where: RR = Hourly rental rate  
SR = Standby rate  
ADJ BB = Blue Book Monthly Rate adjusted for year of manufacture  
RF = Regional Factor of 1.06  
EOC = Estimated Hourly Operating Costs from Blue Book

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- Contractor is to provide the Engineer with documentation from the Blue Book of the ADJ BB and EOC for each piece of equipment being used on the T&M Work. If a piece of equipment that is not in the Blue Book is needed, rates shall be agreed to in writing before the equipment is used.
2. The number of hours to be paid for will be the number of hours that the equipment is actually used on a specific T&M activity.
  3. Overtime shall be compensated at the same rate as indicated above.
  4. The EOC will be used for each hour that the equipment is in operation for the T&M Work. Such costs do not apply to idle time regardless of the cause.
  5. Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the direction of the Engineer. Such payment will be made at the standby rate established above. The Engineer must approve the payment of standby rates for equipment before the costs are incurred. Payment for standby time will not be made on any day the equipment operates for eight or more hours. For equipment accumulating less than eight hours operating time on any normal work day, standby payment will be limited to only that number of hours that, when added to the operating time for that day, equals eight hours. Additionally, payment for standby time will not be made in any consecutive 30 day period that the equipment operates for 176 or more hours. Standby payment will not be made in any case on days not normally a work day.
  6. The rates established above include the cost of fuel, oil, lubrication, supplies, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profit, insurance, all costs (including labor and equipment) of moving equipment onto and away from site, and all incidentals, except as follows below.
  7. Transportation charges for each piece of equipment to and from the site of the Work will be paid provided:
    - (1) The equipment is obtained from the nearest source,
    - (2) Charges are restricted to those units of equipment not already available or required on the project, and
    - (3) The equipment is used solely for the T&M Work.
  8. Rental rates for small tools valued at less than \$2,000, if purchased new, will not be paid for but are considered incidental.
  9. Fast use expendable parts not included in the Rental Rate Blue Book will not be paid for but are considered incidental.
  10. Payable time periods will not include:
    - (1) Time elapsed while equipment is broken down;
    - (2) Time spent repairing equipment; or
    - (3) Time elapsed after the equipment is no longer needed.
- (d) *Rental Equipment.* Use of rental equipment not owned or leased by Contractor or subcontractors will be paid for by certified invoice cost. The EOC will also be paid if not included in the rental rate. The use of and rates for rental equipment shall be approved by the Engineer prior to use. Proration of rental rates to an hourly rate for equipment not used solely for the force account shall be based on 176 hours per month, 40 hours per week or 8 hours per day as applicable. The cost of moving the rental equipment onto and away from the job will also be paid when the equipment is used solely for the T&M Work. An amount equal to 10 percent of the total due to Contractor for rental equipment cost is added to compensate Contractor for related overhead costs.



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(e) *Administrative Compensation.* Administrative compensation will be paid to Contractor for Work performed on a T&M basis by a subcontractor, utility, railroad, waste disposal company, or specialty firm. The compensation will be percentage of the value of the T&M Work performed in accordance with the following:

To \$1,000 .....	10%
Over \$1,000 to \$10,000.....	\$100 plus 5% of excess over \$1,000
Over \$10,000.....	\$550 plus 3% of excess over \$10,000

The percentages will be calculated after certified invoices are furnish by Contractor.

(f) *Records.* Contractor's representative and the Engineer shall, on a daily basis agree in writing on the quantities of labor, equipment and materials used for Work completed on a T&M basis.

(g) The additional percentages stated in (a) through (e) above constitute full compensation for all items of expense not specifically designated, including general superintendence, use of incidental tools, field and office overhead and profit. The total payment made as provided above shall constitute full compensation for such Work.

**51. Compensation for Compensable Delays.**

If the Engineer determines that a delay is compensable in accordance with either item **53. Dispute Resolution** or item **23. Determination and Extension of Contract Time**, monetary compensation will be determined in accordance with this item.

(a) These categories represent the only costs that are recoverable by Contractor. All other costs or categories are not recoverable:

- (1) Actual wages and benefits, including FICA, paid for additional labor not otherwise included in (5) below;
- (2) Costs for additional bond, insurance and tax;
- (3) Increased costs for materials;
- (4) Equipment costs calculated in accordance with Item **50.(c)** for Contractor owned equipment and based on invoice costs for rented equipment;
- (5) Costs of extended job site overhead;
- (6) Costs of salaried employees not otherwise included in (1) or (5) above incurred as a direct result of the delay;
- (7) Claims from subcontractors and suppliers at any level;
- (8) Compensation for which no specific allowance is provided, including profit and home office overhead will be provided as follows. The compensation will be percentage of the total of items (1) through (7) in accordance with the following:

To \$1,000 .....	10%
Over \$1,000 to \$10,000.....	\$100 plus 5% of excess over \$1,000
Over \$10,000.....	\$550 plus 3% of excess over \$10,000

(b) In adjustment for costs as allowed above, County will have no liability for the following items of damages or expense:

- (1) Profit in excess of that provided in (a) above;
- (2) Loss of profit;

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- (3) Additional cost of labor inefficiencies in excess of that provided in (a) above;
- (4) Home office overhead in excess of that provided in (a) above;
- (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;
- (6) Indirect costs or expenses of any nature in excess of that provided in (a) above;
- (7) Attorney fees, claim preparation fees, and expert fees.

All costs claimed must be documented.

**52. Value Engineering Change Proposals by Contractor.** Contractor may develop a proposal for value engineering changes that improve construction techniques, alternative materials, and other innovations. Depending on funding sources and type of contracts, proposals may not be accepted on all projects. Proposals must provide a project comparable to Engineer of Record's original design either at lower cost, improved quality, or both. Proposals that lower the quality of the intended project will be rejected, if any part of the proposal is rejected the entire proposal will be rejected. Bid prices shall not be based on the anticipated approval of a Value Engineering Change Proposal (VECP). Proposals shall be submitted only by the successful bidder after contract award. If a VECP is rejected, the Work shall be completed in accordance with the Contract at contract bid prices. Any delay to the project due to a VECP submittal and review shall be considered within Contractor's control and will be non-excusable with the exception of those delays that are approved as part of the VECP.

Proposals shall be categorized as VECP (Category A) or VECP (Category B). VECPs (Category A) will be all proposals that involve the design and construction of a structure including but not limited to a bridge, retaining wall, concrete box culvert, or building. A VECP (Category A) will also include any proposal that would result in a change of original bid items that totals over \$250,000. Alternatives investigated and not selected in the project Structural Selection Reports may be presented in a VECP if significant benefits can be demonstrated to County or Engineer. In addition, design criteria and constraints listed in the Structural Selection Report cannot be modified or relaxed as part of a VECP unless significant and previously unknown benefits can be proven to the Engineer. Experimental or demonstration-type design concepts, products, structures, or elements that have not been pre-approved by County, in writing, for general use will be considered a VECP (Category A). Category A proposals will also result in a realized and shared cost savings to County. Cost savings generated to the Contract as a result of VECP offered by Contractor and accepted by County shall be shared between Contractor and County, with a split of the savings 40% to Contractor and 60% to County.

All other VECPs that do not meet the previous requirements will be classified as a VECP (Category B).

Net cost savings shall be split 40% to Contractor and 60% to County as defined in the Basis of Payment section of this specification.

Both VECP (Category A) and VECP (Category B) will produce savings to County or provide improved project quality without impairing essential functions and characteristics of the facility. Essential functions include but are not limited to: service life, requirements for planned future development, prior commitments to governmental agencies or the public, corridor requirements, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction.

Contractor must submit a full VECP proposal. These proposals are subject to rejection at any time if they do not meet the criteria outlined in this subsection.

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(a) Submittal of Full Value Engineering Change Proposal. The following materials and information shall be submitted for both Category A and Category B VECPs:

- (1) A statement that the proposal is submitted as a VECP.
- (2) A description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on service life, requirements for planned future development, prior commitments to governmental agencies or the public, corridor requirements, economy of operation, ease of maintenance, desired appearance, safety, and impacts to the traveling public or to the environment during and after construction. Contractor shall request in writing the necessary information from the Project Manager.
- (3) A complete set of plans and specifications showing the proposed revisions relative to the original Contract. This portion of the submittal shall include design notes and construction details. The proposed plans and specifications shall be signed and sealed by Contractor's Engineer.
- (4) A cost comparison, summarizing all of the items that the proposed VECP replaces, reduces, eliminate, adds, or otherwise changes from the original Contract Work, including all impacts to traffic control, detours and all other changes. The cost comparison shall not include cost savings resulting from purportedly decreased inspection or testing requirements, or County overhead. All costs and proposed unit prices shall be documented by Contractor.
- (5) A Statement specifying the date by which a Change Order must be executed to obtain the maximum cost reduction during the remainder of the Contract and the date when a response from the Engineer is required to avoid delays to the prosecution of the Contract.
- (6) A statement detailing the effect the Proposal will have on the time for completing the contract.
- (7) A description of any previous use or testing of the proposed changes and the conditions and results. If the Proposal was previously submitted on another County project, the proposal shall indicate the date, Contract number, and the action taken by County.
- (8) An estimate of any effects of the VECP will have on other costs to County.
- (9) A statement of life cycle costs, when appropriate. Life cycle costs will not be considered as part of cost savings but shall be calculated for additional support of the Proposal. A discount rate of four percent shall be used for life cycle calculations.

(b) Evaluation. VECP will be evaluated by the as shown below. Additional information needed to evaluate Proposals shall be provided in a timely manner. Untimely submittal of additional information will result in rejection of the Proposal. Where design changes are proposed, the additional information shall include results of field investigations and surveys, design and computations, and changed plan sheets required to develop the design changes.

1. The Engineer will determine if a Proposal qualifies for consideration and evaluation. The Engineer may reject any Proposal that requires excessive time or costs for review, evaluation, or investigation. The Engineer may reject proposals that are not consistent with County's design criteria for the project.

2. VECPs, whether or not approved by County, apply only to the ongoing Contracts referenced in the Proposal and become the property of County. Proposals shall contain no restrictions imposed by Contractor on their use or disclosure. County has the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the Proposal. County retains the right to utilize any accepted Proposal or part thereof on other projects without obligation to Contractor. This provision is subject to rights provided by law with respect to patented materials or processes.

3. If County is already considering revisions to the Contract or has approved changes in the Contract

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that are subsequently proposed in a VECP, the Engineer will reject the Proposal and may proceed to implement these changes without obligation to Contractor.

4. Contractor shall have no claim against County for additional costs or delays resulting from the rejection or untimely acceptance of a VECP. These costs include but are not limited to: development costs, loss of anticipated profits, increased material or labor costs, or untimely response.

5. Proposals will be rejected if equivalent options are already provided in the Contract.

6. Proposals that only reduce or eliminate contract pay items will be rejected.

7. The cost savings and other benefits generated by the Proposal must be sufficient to warrant review and processing, as determined by the Engineer.

8. A proposal changing the type or thickness of the pavement structure will be rejected.

9. No VECP proposal can be used to alter incentive and disincentive rates and maximums on Cost plus Time bid (A+B) projects.

10. Right of Way cannot be bought as part of a VECP to eliminate phasing on a project.

11. A VECP changing the design of a structure may be considered by County, if the design meets the following conditions:

(1) The design shall not involve detouring of traffic onto local roads or streets to an extent greater than the original plans, unless previously approved by the affected local agencies.

(2) The design has the same roadway typical section as the original plans.

(3) The design meets or exceeds the benefits of the construction handling or traffic phasing scheme shown in the original plans.

(4) The design meets or exceeds all environmental commitments and permit requirements of the original Contract.

(5) The design shall not increase environmental impacts beyond those of the original Contract.

(6) The design meets or exceeds the vertical and horizontal clearances and hydraulic requirements shown on the original plans.

(7) The design has the same or greater flexibility as the original design to accommodate future widening.

(8) The design shall not change the location of the centerline of the substructure elements, without demonstrating substantial benefits over the original plans.

(9) The design shall not change the grade or elevation of the final riding surface, without demonstrating substantial benefits over the original plans.

(10) The design shall match corridor future development plans and architectural, aesthetic and pavement requirements, if applicable.

(11) The design shall not adversely impact County's bridge inspection maintenance, or other long-term costs or operations.

(12) The design shall meet all County design standards and policies.

(13) The design shall include all additional costs and coordination necessary to relocate utilities.

(14) Major structure designs provided by Contractor shall include an independent plan review and design check by a Professional Engineer licensed in the State of Colorado and employed by a firm other than the engineer-of-record. This design review will be performed at Contractor's expense and shall be included in Contractor's engineering costs.

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(15) Contractor shall provide County with all design calculations, independent design check calculations, a rating package for each bridge prepared in accordance with the current CDOT Bridge Rating Manual, and a record set of quantity calculations for each structure.

12. The Engineer will reject all or any portion of the design or construction Work performed under an approved VECP if unsatisfactory results are obtained. The Engineer will direct the removal of such rejected Work and require construction to proceed under the original Contract requirements without reimbursement for Work performed under the proposal, or for its removal.

If a design VECP meets these and all other requirements, County may, at its sole option, accept or reject the proposal.

(c) Basis of Payment. If the VECP is accepted, a Change Order will authorize the changes and payment (any Work associated with the proposal can only be done once a Change order is issued). Reimbursement will be made as follows:

1. The changes will be incorporated into the Contract by changes in quantities of unit bid items, new agreed unit price items, lump sum or any combination, as appropriate, under the Contract. Unless there is a differing site condition as described in item **42. Differing Site Conditions**, Contractor shall not receive additional compensation for quantity overruns, design errors, supplemental surveys, geotechnical investigations, additional items, or other increases in cost that were not foreseen in the accepted VECP unless otherwise approved by the Engineer.

2. For all VECPs, the incentive payment shall be calculated as follows:  
(gross cost of deleted Work) - (gross cost of added Work) = (gross savings)

(gross savings) - (Contractor's engineering costs) - (County's engineering costs) = (net savings)

Contractor's total incentive = 40% net savings

Contractor's engineering costs will be reimbursable only for outside consultant costs that are verified by certified billings. County's engineering costs shall be actual consultant costs billed to County and extraordinary in-house personnel labor costs. These labor costs will be calculated at the fixed amount of \$50.00 per hour per employee. Project personnel assigned to the field office or who Work on the project on a regular basis shall not be included in County's portion of the cost.

3. At the completion of the VECP design Work, Contractor shall furnish the Engineer any additional documentation such as surveys, geotechnical reports, documentation, or calculations and shop drawings required to complete the Work.

At the completion of the project, Contractor shall furnish the Engineer with PE-stamped Record sets, and As-Constructed plans showing the VECP Work.

(d) Contractor Appeal Process. Appeals can be made only on VECPs (Category A). The Prime Contractor submitting the VECP may file a one-time appeal to the Mesa County Public Works Director on the denial of any VECP (Category A). Contractor must have a valid reason for the appeal and the decision of the Mesa County Public Works Director will be final.

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**53. Dispute Resolution.**

This subsection details the process through which the parties (County and Contractor) agree to resolve any issue that may result in a dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible.

A dispute is a disagreement concerning contract price, time, interpretation of the Contract, or all three between the parties at the project level regarding or relating to the Contract. Issues include, but are not limited to, any disagreement resulting from a delay, a change order, another written order, or an oral order from the Engineer, including any direction, instruction, interpretation, or determination by the Engineer, interpretations of the Contract provisions, plans, or specifications or the existence of alleged differing site conditions.

Disputes and claims will not be considered unless Contractor has first complied with specified issue resolution processes such as those included in items **45. Differing Site Conditions** and **23. Determination and Extension of Contract Time**.

Disputes from subcontractors, material suppliers, or any other entity not party to the Contract shall be submitted through Contractor. Review of a pass-through dispute does not create privity of Contract between County and the subcontractor.

The Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the Work shall be referred initially to the Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time.

No change in Contract Price or Contract Time shall be considered or authorized unless a written notice of each such claim, dispute and other matter shall be delivered by Contractor to the Engineer within fifteen (15) days of the occurrence of the event giving rise thereto. Contractor is also required to supplement the written notice of dispute with the following supporting data within forty-five (45) days of the occurrence of the event, unless the Engineer allows an additional period of time to ascertain more accurate data:

- (1) The date of the dispute.
- (2) The nature of the circumstances which caused the dispute.
- (3) A statement explaining in detail the specific provisions of the Contract and any basis, legal or factual, which support the dispute.
- (4) If any, the estimated quantity or amount, of the dispute with supporting documentation.
- (5) An analysis of the progress schedule showing the schedule change or disruption if Contractor is asserting a schedule change or disruption.
- (6) Any other additional information or data which the Engineer determines is needed to aid in resolving the claim through negotiation or which is required to complete an evaluation of the claim.

Failure to submit the claim in writing within the time and in the manner described above, or within such extended time granted by the Engineer, shall constitute a waiver by Contractor of any right equitable or otherwise to make such a claim.

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The dispute resolution process set forth in this subsection shall be exhausted in its entirety prior to initiation of litigation by either party. Failure to comply with the requirements set forth in this subsection shall bar either party from any further administrative, equitable, or legal remedy. The Engineer and Contractor's Superintendent or field level manager will first attempt to negotiate resolution of the issue. If the Parties fail to resolve the issue through negotiation, the dispute will be escalated to the Engineering Division Director and Contractor's next manager level.

The Engineering Division Manager will either deny the merits of the dispute or notify Contractor that the dispute has merit. This determination will include a summary of the relevant facts, Contract provisions supporting the determination, and an evaluation of all scheduling issues that may be involved.

If the dispute is determined to have merit, Contractor and the Engineering Division Manager will determine the adjustment in payment, schedule, or both within 30 days. When a satisfactory adjustment is determined, it shall be implemented in accordance with items **23. Determination and Extension of Contract Time, 48. Extra Work, 49. Compensation for Altered Quantities, or 51. Compensation for Compensable Delays** and the dispute is resolved.

If Contractor accepts the Engineering Division Director's denial of the merits of the dispute, the dispute is resolved and no further action will be taken. If Contractor does not respond in seven days, it will be assumed he has accepted the denial. If Contractor rejects the Engineering Division Director's denial of the merits of the dispute or a satisfactory adjustment of payment or schedule cannot be agreed upon within 30 days, Contractor may further pursue resolution of the dispute by providing written notice to the Public Works Director within seven days.

After receipt of Contractor's written notice to the Public Works Director of unsatisfactory resolution of the dispute, all parties involved in the dispute will meet with the Public Works Director, who will act as a mediator during discussions of the dispute. These meetings shall include a Contractor's representative with decision authority above the project level.

If these meetings result in resolution of the dispute, the resolution will be implemented in accordance with items **23. Determination and Extension of Contract Time, 48. Extra Work, 59. Compensation for Altered Quantities, or 51. Compensation for Compensable Delays** and the dispute is resolved.

If these meetings do not result in a resolution or the participants mutually agree that they have reached an impasse, either party may initiate litigation in accordance with the signed Contract.

Contractor shall proceed diligently with performance of this Contract, pending final resolution of any claim made under this subsection, and shall comply with any decision of County pending final resolution of the claim. Failure to proceed with the Work shall be grounds for suspension or termination of Contractor.

The rendering of a decision by any authorized County Representative with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in item **57. Acceptance**) will be a condition precedent to any exercise by Contractor of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such claim, dispute or other matter.

Neither the County Representative's authority to act under this subsection or elsewhere in the Contract Documents nor any decision made by the County Representative in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the County Representative to Contractor, any Subcontractor, or manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

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Whenever in the Contract Documents the terms “as ordered”, “as directed”, “as required”, “as allowed”, or terms of the like effect or import are used, or the adjectives of like effect or import are used to describe requirement, direction, review or judgment will be solely to evaluate the Work for compliance with Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that the County Representative shall have authority to undertake responsibility contrary to the provisions of the preceding two paragraphs.

**VII. MEASUREMENT, PAYMENT, ACCEPTANCE AND WARRANTY**

**54. Scope of Payment.**

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at his expense without change in the Contract Price.

Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, subject to the provisions of item **59. No Waiver of Legal Rights.**

Work or materials for which there are pay items and which are to be paid for separately will be included in the appropriate pay item in the Bid Schedule. Work or materials that are essential to the project but for which there are no pay items, will not be measured and paid for separately but shall be included in the project.

**55. Progress Payments.**

Partial payments will be made once each month as the Work progresses when Contractor is performing satisfactorily under the Contract. At least ten (10) days before each progress payment falls due, Contractor shall submit to the Engineer for review, an Application for Payment filled out and signed by Contractor covering the Work completed as of the date indicated on the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as the Engineer may require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor’s obligations reflected in prior Application for Payment.

Contractor shall pay subcontractors and suppliers for all Work which has been satisfactorily completed within seven calendar days after receiving payment for that Work from County. Contractor shall ensure that all subcontractors and suppliers at every tier are promptly paid. If Contractor or its subcontractors fail to comply with this provision, the Engineer will not authorize further progress payment for Work performed directly by Contractor or the noncompliant subcontractor until the required payments have been made.

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to County at the time of payment free and clear of all liens, claims, security interests, and encumbrances (hereafter in these General Contract Conditions referred to as “Liens”).

The Engineer will, within fifteen (15) days after receipt of each Application of Payment, either indicate in writing a recommendation of payment and submit the Application for payment, or return the Application to Contractor indicating Engineer’s reasons for refusing to recommend payment. In the latter case,



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Contractor may make the necessary corrections and resubmit the Application. County shall, within fifteen (15) days of presentation of the Application for Payment with Engineer's recommendation of payment, pay Contractor the amount recommend.

The Engineer may refuse to recommend the whole or any part of the payment if, in his opinion, it would be incorrect to make such representations to County. He may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in the Engineer's opinion to protect County from loss because:

- (1) The Work is defective or completed Work has been damaged requiring correction or replacement;
- (2) Written claims have been made against County or liens have been filed in connection with the Work;
- (3) The Contract Price has been reduced because of Modifications;
- (4) County has been required to correct defective Work or to complete the Work in accordance with item **36. Removal of Unacceptable Work and Unauthorized Work**;
- (5) Contractor has unsatisfactory performed the Work in accordance with the Contract Documents;
- (6) Contractor's failure to make payment to Subcontractors, or for labor, material or equipment; or
- (7) Any other statutory reason.

**56. Payment for Material on Hand (Stockpiled Material).**

Payments may be made to Contractor for materials to be incorporated into the Work as evidenced by invoices or cost analyses of material produced on the project subject to the following:

- (1) The material has been fabricated or processed and is ready for installation in the project and conforms to the requirements of the Contract. Contractor shall provide the Engineer with a monthly accounting of all materials stockpiled on the project for which stockpiled payment is being requested and certification of compliance that materials conform to the requirements of the Contract. This monthly accounting shall include the specific location of materials, the amounts of materials stockpiled, the amount of materials incorporated into the Work, and the net amounts of materials for which stockpile material payment is being requested.
- (2) The material is stored on the project or County-owned property. The material shall be clearly identified for County project.
- (3) Contractor provides the Engineer with a written cost analysis which confirms that the balance of funds in the corresponding items is sufficient to complete the installation. Partial payments will not exceed 85 percent of the contract unit price for the item or 100 percent of the certified invoice cost of the stockpiled material, whichever is less.
- (4) Contractor shall provide the Engineer with a certified invoice.

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Payment for stockpiled materials will not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials, perishable materials, or materials which will not become an integral part of the finished project will not be made under this subsection.

**57. Acceptance.**

(a) *Partial Acceptance.* If, during the performance of the project, Contractor satisfactorily completes a unit or portion of the project, such as a structure, or a section of road or pavement that can be used advantageously by County, the Engineer may make final inspection of that unit. If the Engineer finds that the unit has been satisfactorily completed in compliance with the Contract, Contractor may be relieved of further responsibility for the unit except as otherwise provided in item **11. Opening Sections of Project to Traffic**. Partial acceptance shall not void or alter any of the terms of the Contract.

When Contractor considers the entire Work ready for its intended use, Contractor shall request that Engineer issue a Certificate of Substantial Completion for the entire project. Within a reasonable time thereafter, the Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor of items remaining to be completed before issuance of Substantial Completion. If Engineer considers the Work substantially complete, Engineer will prepare a Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the Certificate a list of items to be completed or corrected within 30 days of the date of Substantial Completion and before final payment.

County shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but shall allow Contractor reasonable access to complete or correct items on the tentative list.

Upon notice from Contractor that the Work is complete, Engineer will make a final observation with Contractor and will notify Contractor of all Work that is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies. All such deficiencies shall be remedied within seven (7) days of notification to Contractor by Engineer, or County may act to remedy deficiencies in accordance with the provisions of item **34. Removal of Unacceptable Work and Unauthorized Work**. Final acceptance under this subsection does not waive any legal rights contained in item **59. No Waiver of Legal Rights**

(c) *Final Payment.* After Contractor has completed all corrections on the list of items attached to the Substantial Completion certificate as stated in item (b) above to the satisfaction of the Engineer, and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after the Engineer has indicated that the Work is acceptable (subject to the provisions of the waiver of claims), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as County may reasonably require, together with complete and legally effective releases or waivers (satisfactory to County) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by County, Contractor may furnish receipts or a release in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which County might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment.

The making and acceptance of final payment shall constitute a waiver of all claims by County against Contractor, except claims from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein. However, it shall not constitute a waiver by County of any rights in respect to Contractor's continuing obligations under the

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Contract Documents or those claims by Contractor against County other than those previously made in writing and still unsettled.

Within 30 calendar days after substantial completion of the project, Contractor shall submit to County:

1. A letter signed by Contractor certifying that all material incorporated into the project met or exceeded project requirements/specifications.
2. A letter signed and stamped by a professional engineer in the State of Colorado certifying that all the required materials testing was completed as per testing schedule and that all material incorporated into the project met minimum standards.
3. The as built markup plan set submitted and stamped by a PLS licensed in the State of Colorado.
4. Digital copy of the Stormwater Management Plan, permit transferred to Mesa County, and all inspection reports.

Final Payment and Retainage will not be released until these documents have been submitted and approved by Engineer.

All costs incidental to the foregoing requirements will not be paid for separately, but shall be included in the Work.

**58. Warranty.**

Contractor warrants and guarantees County that all Work will be in accordance with the Contract Documents, will not be defective and will conform to industry standards. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this section.

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to County and in accordance with Engineer's written instructions, either correct such defective Work, or if it has been rejected by Engineer, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. The one-year correction period shall be extended to allow time for response and/or correction by Contractor.

**59. No Waiver of Legal Rights.**

Final acceptance shall not preclude County from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from Contractor or surety, or both, overpayments sustained because Contractor failed to fulfill obligations under the Contract. A waiver on the part of County of any breach of any part of the Contract shall not be held to be a waiver of any other of subsequent breach.

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Contractor without prejudice to the terms of the Contract, shall be liable to County, for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards County's rights under any warranty or guaranty.