

SUPPLEMENTARY CONDITIONS

January 30, 2019 Edition

These Supplementary Conditions shall supersede and control over any inconsistencies or conflicting provisions within the Contract Documents.

SC-1 The Owner hereby states that the amount of money appropriated for this project is equal to or in excess of the awarded Contract amount.

SC-2 The parties agree that issuance of any change order or other form of order or directive by the Owner or Engineer, that requires additional, compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, is prohibited unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of additional work have been made, or unless such work is covered under a remedy-granting provision in this Contract.

SC-3 Any dispute arising out of this Contract, and the performance thereof, shall be resolved by a state court of appropriate jurisdiction, in Fremont County, Colorado. The prevailing party to any lawsuit shall be entitled to receive, as part of costs awarded, reasonable attorney fees, expert fees, and other costs of litigation.

SC-4 Upon receipt of any payment from the Owner, the Contractor shall be required to make payments to each of his subcontractors the amount due such subcontractor, if such amounts for subcontractor services and materials were included in the Contractor's request for payment and the Contractor actually received such amounts from the Owner. The Contractor shall make such payments to any subcontractor within seven (7) calendar days following receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor, as long as the subcontractor is satisfactorily performing under his Contract with the Contractor. If the Contractor fails to make timely payments to the subcontractor as required by C.R.S. §24-91-103, the Contractor shall pay to the subcontractor interest either as specified by Contract, or at the rate of 15% per annum, whichever is higher, on the amount of the payment which was not made in a timely manner.

SC-5 In the event that it becomes necessary for the Owner to take over the completion of any of the Contract performance, then of all amounts owing the Contractor, including the withheld percentage, the amounts shall be applied first toward the cost of completion of the Contract; second, toward performance of the Owner's withholding requirements pursuant to C.R.S. §38-26-107; third, to the surety furnishing bonds for the Contract work, to the extent such surety has incurred liability or expense in completing the Contract work or made payments pursuant to C.R.S. §38-26-106; then to the Contractor.

SC-6 To the extent authorized by law, the Contractor shall indemnify and hold harmless the County against any and all claims, damages, liability and Court awards including costs, expenses and attorneys' fees incurred as a result of any act or omission by the Contractor, or its agents, subcontractors, or assignees pursuant to the terms of this contract.

SC-7 Upon the Notice of Award, Owner shall furnish Contractor with three (3) copies of the Agreement and other Contract Documents, along with appropriate instructions. Contractor shall execute and deliver all copies to Owner, with the required Bonds, within ten (10) days of the Notice of Award. Upon execution by Owner, two copies will be returned to Contractor who shall promptly deliver one copy to his surety. Owner will retain one copy.

SC-8 TYPES AND LIMITS OF INSURANCE: In accordance with the insurance requirements of the General Conditions, Contractor shall provide the coverage specified herein. Satisfactory certificates of insurance shall be filed with Owner prior to beginning the Work.

The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

Worker's Compensation:

- (1) State: Statutory
- (2) Applicable Federal (e.g. Longshoreman's): Statutory
- (3) Employer's liability: \$100,000

Comprehensive General Liability:

- (1) Bodily Injury:
\$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate, Products and Completed Operation
- (2) Property Damage:
\$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate
- (3) Property Damage Liability Insurance will provide explosion, collapse, and underground coverages where applicable.
- (4) Personal injury, with exclusion deleted:
\$1,000,000 Annual Aggregate

Comprehensive Automobile Liability:

- (1) Bodily Injury:
 - \$1,000,000 Each Person
 - \$1,000,000 Each Accident
- (2) Property Damage:
 - \$1,000,000 Each Occurrence

SC-9 TAXES: In addition to the requirements in the General Conditions, the following provisions apply:

SALES AND USE TAXES: Owner is exempt from Colorado State Sales and Use Taxes on materials to be permanently incorporated in the work. Said taxes shall not be included in the Contract Price. Contractor and subcontractor shall apply to the Colorado Department of Revenue, Sales Tax Division for an exemption certificate and purchase the materials tax free. Contractor and subcontractor shall be liable to State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates.

SC-10 RETAINAGE:

SC-10.1 OWNER REQUIREMENTS: As indicated in the General Conditions, partial payments will be made as the Work progresses at the end of each calendar month or as soon thereafter as practicable. An amount equivalent to ten percent (10%) of the amount shown to be due the Contractor on each estimate shall be withheld until fifty percent (50%) of the Work required by the contract has been performed. Thereafter, an amount equivalent to five percent (5%) of amount shown to be due the Contractor on each estimate shall be withheld until the Notice of Final Acceptance has been issued.

The term 'work' as set forth herein shall be work performed including materials and equipment installed at the construction site. No payments will be made for material delivered to the site.

SC-10.2 STATE REQUIREMENTS: Owner is required by law (C.R.S §38-26-107) to withhold from all payments to Contractor sufficient funds to insure the payment of all claims for labor, material, team hire, sustenance, provisions, provender, or other supplies used or consumed by Contractor or his subcontractors in or about the performance of the Work. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with Owner a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless an action is commenced within that time to enforce such unpaid claim and a notice of Lis Pendens is filed with Owner.

At the expiration of such ninety day period, Owner shall pay to Contractor such moneys and funds as are not the subject of suit and Lis Pendens notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments which may result from such suit.

SC-11 OVERTIME WORK: Except as indicated otherwise in the Contract Documents, no Work shall be done between 6:00 p.m. and 7:00 a.m. nor on Sundays or legal holidays without the written permission of Owner. However, emergency work may be done without prior permission. Night work may be undertaken as a regular procedure with the written permission of Owner; such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

SC-12 CONTRACT TIME AND LIQUIDATED DAMAGES:

SC- 12.1 NOTICE TO PROCEED: Neither the Contractor nor any subcontractor shall commence Work on the Project prior to receipt of the written Notice to Proceed issued by the Owner. The Contractor shall commence Work as soon as practicable after the starting date specified in the Notice to Proceed. All work under the Contract shall be completed within the number of calendar days stated under the Contract Time, plus extensions beginning with the day following the starting date specified in the Notice to Proceed.

The Contractor shall notify Owner 24 hours in advance of the time and place where Work will begin. Two working days advance notice is required for surveying and staking.

SC- 12.2 DETERMINATION AND EXTENSION OF CONTRACT TIME: The contract time shall be as stated in the Bid Form, and shall include all weekends and legal holidays. All calendar days elapsing between the effective dates of any written notice from the Owner to suspend work and to resume work following suspension, shall be excluded, provided the suspension is not due to the Contractor's actions or inactions.

The contractor may submit a written request for an extension to the completion time. The request must set forth specific reasons of conditions beyond the control of or through no fault of the Contractor. The Engineer shall evaluate the request and make a recommendation to the Owner who may extend the time for completion as the conditions justify. If granted, the extended time for completion shall be in full effect the same as though it were the original time for completion.

SC-12.3 TIME FOR COMPLETION AND LIQUIDATED DAMAGES: The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on a date specified in the Notice to Proceed. The Contractor will proceed with the Work at such a rate of progress to insure full completion within the Contract Time as stated in the Bid Form.

It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.

Should the Contractor fail to complete the Work within the Contract Time, or extension of time granted by the Owner, the Contractor shall pay the Owner liquidated damages in the amount stated in the Bid Form per day for each calendar day the Contractor may be in default of the time stipulated in the Contract Documents.

The Contractor shall not be charged with liquidated damages provided the delay in completion of the Work is due to the following and the Contractor has promptly given written notice of such delay to the Owner or Engineer:

(A) To any preference, priority or allocation order duly issued by the Owner.

(B) To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, material or fuel shortages due to governmental regulations or allocations, freight embargoes and abnormal and unforeseeable inclement weather.

SC-13 NONDISCRIMINATION AND AFFIRMATIVE ACTION: The Contractor agrees to comply, and require all subcontractors to comply, with all provisions of the Colorado Anti-discrimination Act of 1957, as amended; C.R. S. §24-34-301 to 308, as amended, and all provisions of any other Federal or State statute regarding equal employment opportunity in the performance of this Contract.

SC-14 DISCOVERY OF ARCHAEOLOGICAL AND OTHER HISTORICAL ITEMS: In the event of an archaeological find during any phase of construction, the following procedure will be followed:

(1) Construction shall be halted, with as little disruption to the archaeological site as possible.

(2) The Contractor shall notify the Owner who shall contact the State Historical Preservation Officer.

(3) The State Historical Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed,

(4) The entire event should be handled as expediently as possible in order to hold the loss in construction time to a minimum while still protecting archaeological finds.

A similar procedure should be followed with regard to more recent historical resources.

Should any artifacts, housing sites, etc., be uncovered, the same procedure should be followed as for an archaeological find. In the event archaeological/historical data are evaluated to meet National Register criteria, the Advisory Council on Historic Preservation may be notified and asked to comment by EPA.

SC-15 CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

MEASURES: Every effort shall be made by the Contractors and subcontractors to prevent and correct problems associated with erosion and runoff processes which could occur during and after project construction. The efforts should be consistent with applicable local and state ordinances and the EPA Non-point Source Pollution Control Guidance. Where appropriate, the Contractor's efforts shall reflect the following engineering principles:

- (1) When appropriate, land grading and excavating should be kept at a minimum to reduce the possibility of creating runoff and erosion problems which require extensive control measures.
- (2) Whenever possible, topsoil should be removed and stockpiled before grading begins.
- (3) Land exposure should be minimized in terms of area and time.
- (4) Exposed areas subject to erosion should be covered as quickly as possible by means of mulching or vegetation.
- (5) Natural vegetation should be retained whenever feasible.
- (6) Appropriate structural or agronomic practices to control runoff and sedimentation should be provided during and after construction.
- (7) Clearing and grading should not be started until a firm construction schedule is known and can be effectively coordinated with the grading and clearing activity.

SC-16 CONSTRUCTION SITE TRAFFIC CONTROL: Every effort shall be made by the Contractor and subcontractors to keep construction activities and practices within reasonable limits of the site, to maintain adjacent traffic flow and to minimize disruption and preserve adjoining lands and environment. Contractor shall make provisions to maintain existing traffic flow with minimal interruptions and delay.

SC- 17 CONSTRUCTION SITE DRAINAGE CONTROL: Every effort shall be made by the Contractor and subcontractors to keep the drainage and runoff from adjacent areas free and clear of debris and able to transport stormwater runoff flows efficiently and effectively into existing channels and culverts and inlets while providing protection for ongoing construction activities and existing roads.

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