

**COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT (“CIC”) NOS. 7 & 11**

141 Union Boulevard, Suite 150  
Lakewood, Colorado 80228-1898

Tel: (303) 987-0835

Fax: (303) 987-2032

NOTICE OF A REGULAR MEETING AND AGENDA

<u>Board of Directors</u>	<u>Office</u>	<u>Term/Expires</u>
Timothy D’Angelo	President	2023/May 2023
Todd Witty	Treasurer	2025/May 2023
Theodore Laudick	Assistant Secretary	2025/May 2025
<b>VACANT</b>		2023/May 2023
<b>VACANT</b>		2023/May 2023
Ann Finn	Secretary	

DATE: February 17, 2023

TIME: 10:00 A.M.

PLACE: Zoom Meeting: **This meeting will be held via Zoom without any individuals (neither District representatives nor the general public) attending in person. The meeting can be joined through the directions below:**

Zoom information:

<https://us02web.zoom.us/j/89562312783?pwd=MIZqQ09nQ3FGL3MzRXNVczNHc2ZOUT09>

Meeting ID: 895 6231 2783

Passcode: 655550

Dial In: 1-253-215-8782

I. ADMINISTRATIVE MATTERS

A. Present Disclosures of Potential Conflicts of Interest.

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B. Confirm quorum, location of meeting and posting of meeting notices. Designate 24-hour posting location. Approve Agenda.

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C. CONSENT AGENDA: These items are considered to be routine and will be approved and/or ratified by one motion. There will be no separate discussion of these items unless a Board member so requests; in which event, the item will be removed from the Consent Agenda and considered in the Regular Agenda.

- Consider approval of Minutes of the December 16, 2022 Regular Meeting (enclosures).
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II. PUBLIC COMMENTS

- A. Members of the public may express their views to the Board on matters that affect the District that are otherwise not on the agenda. Comments will be limited to three (3) minutes per person.
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III. FINANCIAL MATTERS

- A. **[CIC No. 7 only]** Review and accept unaudited financial statements for the period ending \_\_\_\_\_, 2022 and cash position statement dated \_\_\_\_\_, 2022 and updated as of \_\_\_\_\_, 2022 (to be distributed).
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- B. **[CIC No. 7 only]** Review and accept payment of claims from \_\_\_\_\_, 2022 through \_\_\_\_\_, 2022 in the amount of \$\_\_\_\_\_ (to be distributed).
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IV. LEGAL MATTERS

- A. **[CIC No. 7 only]** Review and consider approval of Facilities Acquisition Agreement by and between Colorado International Center Metropolitan District No. 7, DG Strategic VII, LLC, and Highpoint North Acquisition LLC (enclosure).
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- B. **[CIC No. 7 only]** Review and consider approval of First Amendment to Amended and Restated Intergovernmental Agreement – Regarding Cost Sharing of the Extension of Denali Street (60<sup>th</sup> Avenue to 66<sup>th</sup> Avenue) by and between HM Metropolitan District No. 1, Aurora High Point at DIA Metropolitan District, and Colorado International Center Metropolitan District No. 7 (enclosure).
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V. CAPITAL MATTERS

- A. **[CIC No. 7 only] 66<sup>th</sup>/68<sup>th</sup> and Denali Street Project (the “Project”):**
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- (1) Review and consider approval of Engineer’s Report and Certification #02, dated \_\_\_\_\_ and prepared by Ranger Engineering, LLC, certifying soft, indirect, District-funded, and hard costs for Public Improvements in the amount of \$\_\_\_\_\_ (to be distributed). Consider acceptance of \$\_\_\_\_\_ in certified costs for Public Improvements.
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- B. **[CIC No. 7 only]** Discuss status of design work for Dandelion Draw, No Name Pond and the 68<sup>th</sup> Avenue/Loop Road west of Gun Club Road.
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- C. **[CIC No. 7 only]** Discuss status of 66<sup>th</sup>/68<sup>th</sup> Ave. and Denali Project.
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- D. **[CIC No. 7 only]** Discuss and consider award of contract to Dynaelectric Company for the 66<sup>th</sup>, 68<sup>th</sup> Ave. and Denali St. Street Light Project, for the amount of \$456,635 (enclosure).
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VI. OTHER BUSINESS

- A. \_\_\_\_\_

- VII. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR MARCH 17, 2023.**

## RECORD OF PROCEEDINGS

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### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 7 HELD DECEMBER 16, 2022

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Colorado International Center Metropolitan District No. 7 (referred to hereafter as the "District") was convened on Friday, the 16th day of December, 2022, at 10:00 a.m. This District Board meeting was held and properly noticed to be held via Zoom. The meeting was open to the public.

#### ATTENDANCE

#### Directors In Attendance Were:

Timothy D' Angelo  
Todd Witty  
Theodore Laudick

#### Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc.

Megan Becher, Esq. and Erica Montague, Esq.; McGeady Becher P.C.

Zachary Leavitt; CliftonLarsonAllen LLP

Paul Hyde; Hyde Development

#### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

**Disclosure of Potential Conflicts of Interest:** The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Attorney Becher requested that the Directors review the Agenda for the meeting and advise the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

#### ADMINISTRATIVE MATTERS

**Location of Meeting and Posting of Notices:** The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's Board meeting. The Board determined that this meeting would be held by video/telephonic means, and encouraged public participation via video or telephone. The Board further noted that notice of the time, date and location/manner of the meeting was duly posted and that the District had not received any objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic

## RECORD OF PROCEEDINGS

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manner of the meeting be changed by taxpaying electors within the District boundaries.

**Agenda:** Ms. Finn distributed for the Board's review and approval a proposed Agenda for the District's Regular Meeting.

Following discussion, upon motion duly made by Director D'Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Agenda was approved, as presented.

**Consent Agenda:** The Board considered the following actions:

- Approve the Minutes of the October 21, 2022 Regular Meeting.

Following review, upon motion duly made by Director D'Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved and/or ratified approval of, as appropriate, the above actions.

### **PUBLIC COMMENTS**

There were no public comments.

### **FINANCIAL MATTERS**

**Unaudited Financial Statements / Cash Position Statement:** There were no financial statements or cash position statement presented.

**Payment of Claims:** The Board reviewed payment of claims for the period of June 13, 2022 through December 7, 2022 in the amount of \$3,785,334.50.

Following review, upon motion duly made by Director D'Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved payment of claims for the period of June 13, 2022 through December 7, 2022 in the amount of \$3,785,334.50.

### **LEGAL MATTERS**

**Facilities Acquisition Agreement by and between Colorado International Center Metropolitan District No. 7, DG Strategic VI, LLC, and Highpoint North Acquisition, LLC:** The Board deferred discussion.

### **CAPITAL MATTERS**

**66th/68th and Denali Project ("Project"):**

**Infrastructure Financing and Coordination Agreement – Denali Street from 66th Avenue to 68th Avenue Improvements, by and between HM Metropolitan District No. 1 and Colorado International Center Metropolitan District No. 7:** Attorney Montague reviewed with the Board the Infrastructure Financing and

## RECORD OF PROCEEDINGS

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Coordination Agreement – Denali Street from 66<sup>th</sup> Avenue to 68<sup>th</sup> Avenue Improvements, by and between HM Metropolitan District No. 1 and Colorado International Center Metropolitan District No. 7.

Following discussion, upon motion duly made by Director D’Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved the Infrastructure Financing and Coordination Agreement – Denali Street from 66<sup>th</sup> Avenue to 68<sup>th</sup> Avenue Improvements, by and between HM Metropolitan District No. 1 and Colorado International Center Metropolitan District No. 7.

**Amended and Restated Intergovernmental Agreement – Regarding Cost Sharing of the Extension of Denali Street (60<sup>th</sup> Avenue to 66<sup>th</sup> Avenue) by and between HM Metropolitan District No. 1, Aurora High Point at DIA Metropolitan District, and Colorado International Center Metropolitan District No. 7:**

Attorney Montague reviewed with the Board the Amended and Restated Intergovernmental Agreement – Regarding Cost Sharing of the Extension of Denali Street (60<sup>th</sup> Avenue to 66<sup>th</sup> Avenue) by and between HM Metropolitan District No. 1, Aurora High Point at DIA Metropolitan District, and Colorado International Center Metropolitan District No. 7.

Following discussion, upon motion duly made by Director D’Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved the Amended and Restated Intergovernmental Agreement – Regarding Cost Sharing of the Extension of Denali Street (60<sup>th</sup> Avenue to 66<sup>th</sup> Avenue) by and between HM Metropolitan District No. 1, Aurora High Point at DIA Metropolitan District, and Colorado International Center Metropolitan District No. 7.

*Engineer’s Report and Certification #01, dated December 9, 2022 and prepared by Ranger Engineering, LLC:* The Board reviewed the Engineer’s Report and Certification #01, dated December 9, 2022, prepared by Ranger Engineering, LLC, certifying soft, indirect, District-funded, and hard costs for Public Improvements in the amount of \$4,076,202.85 (“Report #01”).

Following discussion, upon motion duly made by Director D’Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved Report #01 and accepted \$4,076,202.85 in certified costs for Public Improvements.

**Dandelion Draw, No Name Pond and the 68<sup>th</sup> Avenue/Loop Road west of Gun Club Road:** Mr. Laudick reported to the Board that the design review and approval is ongoing.

**66<sup>th</sup>/68<sup>th</sup> Ave. and Denali Project:** Mr. Laudick reported to the Board that the underground work is complete, grading is underway on the northwest section of the project, and the roadway work has been delayed due to the temperature.

## RECORD OF PROCEEDINGS

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### **OTHER BUSINESS**

**Status of Development:** Director D'Angelo provided an update on the development within the District. He noted the grading work has started and the Dollar General building should be completed by January 2024.

### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Laudick, seconded by Director D'Angelo and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting

## RECORD OF PROCEEDINGS

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### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 11 HELD DECEMBER 16, 2022

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Colorado International Center Metropolitan District No. 11 (referred to hereafter as the "District") was convened on Friday, the 16th day of December, 2022, at 10:00 a.m. This District Board meeting was held and properly noticed to be held via Zoom. The meeting was open to the public.

#### ATTENDANCE

#### Directors In Attendance Were:

Timothy D' Angelo  
Todd Witty  
Theodore Laudick

#### Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc.

Megan Becher, Esq. and Erica Montague, Esq.; McGeady Becher P.C.

Zachary Leavitt; CliftonLarsonAllen LLP

Paul Hyde; Hyde Development

#### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

**Disclosure of Potential Conflicts of Interest:** The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Attorney Becher requested that the Directors review the Agenda for the meeting and advise the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

#### ADMINISTRATIVE MATTERS

**Location of Meeting and Posting of Notices:** The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's Board meeting. The Board determined that this meeting would be held by video/telephonic means, and encouraged public participation via video or telephone. The Board further noted that notice of the time, date and location/manner of the meeting was duly posted and that the District had not received any objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic



## RECORD OF PROCEEDINGS

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manner of the meeting be changed by taxpaying electors within the District boundaries.

**Agenda:** Ms. Finn distributed for the Board's review and approval a proposed Agenda for the District's Regular Meeting.

Following discussion, upon motion duly made by Director D'Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Agenda was approved, as presented.

**Consent Agenda:** The Board considered the following actions:

- Approve the Minutes of the October 21, 2022 Regular Meeting.

Following review, upon motion duly made by Director D'Angelo, seconded by Director Witty and, upon vote, unanimously carried, the Board approved and/or ratified approval of, as appropriate, the above actions.

**PUBLIC  
COMMENTS**

\_\_\_\_\_  
There were no public comments.  
\_\_\_\_\_

**OTHER BUSINESS**

**Status of Development:** Director D'Angelo provided an update on the development within the District. He noted the grading work has started and the Dollar General building should be completed by January 2024.

**ADJOURNMENT**

\_\_\_\_\_  
There being no further business to come before the Board at this time, upon motion duly made by Director Laudick, seconded by Director D'Angelo and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting

# PROJECT MANUAL AND CONTRACT DOCUMENTS

66<sup>th</sup>, 68<sup>th</sup> Ave and Denali St. Street Light Project

Colorado International Center Metropolitan District No. 7  
July 22, 2022

PROJECT MANUAL

**Colorado International Center Metropolitan District No. 7**

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BIDDING AND CONTRACT REQUIREMENTS  
SECTION 00020 INVITATION TO BID

**INVITATION TO BID**

The Colorado International Center Metropolitan District No. 7 (hereinafter called the “**Owner**”) will receive sealed Bids for the 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project (the “**Project**”) at 18591 E 64<sup>th</sup> Ave, Denver CO, 80249 until 10:15 am. August 25, 2022. At such time, Bids received will be publicly opened and read aloud.

A description of the Work to be performed is: New streetlighting consisting of light poles including foundations, meters, transformers, underground conduit and conductors.

Bid packages will be available for pickup after 10:00 am. on August 1, 2022. Send request for bid documents to Randy Ficklin II @ [randy@silverbluffcompanies.com](mailto:randy@silverbluffcompanies.com) . Include company name, contact name, and contact information.

Bids shall be made on the forms furnished by the Owner and shall be enclosed in a sealed envelope and endorsed with the name of the Bidder. A Bid Bond in an amount equal to ten percent (10%) of the total Bid amount will be required. The Bid Bond will be retained by Owner as liquidated damages should the Successful Bidder fail to enter into a Contract with the Owner in accordance with the Bid. Bidders must supply a list of Subcontractors providing \$10,000 or more in labor and/or materials to the Project.

Attention is called to the fact that Bidders offer to assume the obligations and liabilities imposed by the Contract Documents. The Successful Bidder for the Project will be required to furnish a Performance Bond and a Labor and Materials Payment Bond in the full amount of the Contract Price, in conformity with the requirements of the Contract Documents.

Bidders are hereby advised that the Owner reserves the right to not award a Contract until sixty (60) days from the date of the opening of Bids, and Bidders expressly agree to keep their Bids open for the sixty (60) day time period. Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to negotiate contract terms with the Successful Bidder, to require statements or evidence of Bidders’ qualifications, including financial statements, and to accept the proposal that is in the opinion of the Owner in its best interest. Owner also reserves the right to extend the Bidding period by Addendum if it appears in its interest to do so.

Any questions concerning this bid shall be directed in writing to: Randy Ficklin II at [randy@silverbluffcompanies.com](mailto:randy@silverbluffcompanies.com) no later than August 19, 2022.

END OF SECTION

SECTION 00100 INSTRUCTION TO BIDDERS

**INSTRUCTION TO BIDDERS**

Engineer: AE Design  
Attn.: Eric Reitan  
Address: 1900 Wazee Street #205 Denver, CO 80202

Owner: Colorado International Center Metropolitan District  
No. 7  
Attn.: Ted Laudick  
Address: 1401 Lawrence St. Suite 1600 Denver CO 80202

**PART 1 DEFINED TERMS**

**1.01** Terms used in these Instructions to Bidders which are defined in the General Conditions shall have the meanings assigned to them in the General Conditions. The term “**Successful Bidder**” means the lowest, qualified, responsive and responsible Bidder as determined by Owner in its sole discretion and to whom Owner determines (on the basis of Owner’s evaluation as hereinafter provided) to make an award.

**PART 2 COPIES OF CONTRACT DOCUMENTS**

**2.01** Complete copies of the Drawings and Project Specifications for use in preparing Bids may be obtained from the Engineer, at the above address for the actual printing cost. All payments for Bidding Documents are non-refundable.

**2.02** No partial sets of Bidding Documents will be issued. Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

**2.03** Owners and Engineer will make copies of Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work only and do not confer a license or grant for any other use.

**PART 3 QUALIFICATIONS OF BIDDERS**

**3.01** Each Bidder must be prepared to submit written evidence of its qualifications to perform the Work as set forth in Part 17 of these Instructions to Bidders. Bidders may be required to submit evidence that they have a practical knowledge of the particular Work bid upon, and that they have the financial resources to complete the proposed Work. In determining the Bidder’s qualifications, the following factors will be considered: work previously completed by the Bidders and whether the Bidder (a) maintains a permanent place of business, (b) has adequate

plant and equipment to do the Work properly and expeditiously, (c) has the financial resources to meet all obligations incident to the Work, and (d) has appropriate technical experience. Each Bidder may be required to show that it has handled former work so that no just claims are pending against such work. No Bid will be accepted from a Bidder who is engaged in any work which would impair its ability to perform or finance this work. The Bidder shall include a construction schedule prepared by the Bidder for a recent construction project awarded to and undertaken by the Bidder to indicate the Bidder's technical experience.

- 3.02** Each Bid must contain evidence of Bidder's qualification to do business in the State of Colorado. The Bidder shall include an initial Project schedule which shall consist of an overview of the installation and construction of the Project, showing the units of all materials required to be installed against time elapsed from the Notice to Proceed. An award to any Bidder shall not constitute an approval by the Owner or the Engineer of this Project schedule. Such initial Project schedule shall be refined to meet the standards set forth in Part 14.01 of the General Conditions if the Contract is awarded to Bidder.

#### **PART 4 EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

- 4.01** Before submitting a Bid, each Bidder represents that it has (a) examined the Contract Documents thoroughly; (b) visited the Site to familiarize itself with local conditions that may in any manner affect cost, progress or performance of the Work (c) familiarized itself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; (d) studied and carefully correlated Bidder's observations with the Contract Documents; and (e) attended the Pre-Bid conference and Site visitation described in Part 6 herein.

- 4.02** Reference is made to the Soil Investigation Data for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the Site or which may otherwise affect the cost, progress or performance of the Work, and which have been relied upon by the Engineer in preparing the drawings and specifications. Owner has disclosed to the Engineer all information known to it that may be relevant to the subsurface and physical condition at the Site.

Copies of such reports, if any, are available for review at the Engineer's office. Neither Owner nor Engineer makes any warranty concerning such reports.

- 4.03** On request, Owner will provide access to the Site for each Bidder to conduct such investigations and tests as each Bidder deems necessary for submission of its Bid.
- 4.04** The lands upon which the Work is to be performed, right-of-way for access thereto, and other lands designated for use by Contractor in performing the Work,

are identified in the Supplementary Conditions, General Requirements, or Drawings.

**4.05** Access to the Site may be arranged through the Owner's Representative by contacting Randy Ficklin II, email: [Randy@silverbluffcompanies.com](mailto:Randy@silverbluffcompanies.com). Site access will be limited to normal working hours and to pre-arranged times.

**4.06** The submission of a Bid will constitute an incontrovertible representation by the Bidder that Bidder has complied with every requirement of this Article 4 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work. Bidder further acknowledges that it shall provide the performance required by the Contract Documents and that which can be reasonably inferred therefrom.

**4.07** Bidder acknowledges that the Contract Documents are complementary and what is required by one shall be as binding as if required by all.

## **PART 5 INTERPRETATIONS**

**5.01** All questions about the meaning or intent of the Contract Documents are to be submitted to Engineer in writing. Replies will be issued by Addenda. Questions received less than five (5) days prior to the date of opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and all other interpretation or clarifications will be without legal effect. Addenda will be mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. No Addenda will be issued later than three (3) days prior to the date for receipt of Bids except an Addendum, if necessary, postponing the date for receipt of bids or withdrawing the request for Bids.

**5.02** All Addenda to the Contract Documents shall be properly acknowledged by Bidder in the space provided on the Bid Form.

## **PART 6 PRE-BID CONFERENCE**

**6.01** N/A

## **PART 7 BASIS OF BIDS**

**7.01** The Bidder shall submit bids for all contract alternates, if any, listed on the Bid Form, as required by the Bid Form.

## **PART 8 BID SECURITY**

**8.01** Bid Security shall be made payable to the Owner, in an amount of ten percent (10%) of the Bidder's maximum Bid Price, including alternates, if any, and in the form of a Cashier's Check or a Bid Bond on the form attached issued by a surety meeting the requirements of the General Conditions.

**8.02** The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security, whereupon it will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within ten (10) days of the notice of award, or in the event the Successful Bidder fails to pay to Owner the difference, not to exceed the sum between such Bid and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by such Bid, then Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the “effective date of Agreement” (which term is defined in the General Conditions) or the sixty-first day after the Bid opening. Bid Security of other Bidders will be returned within seven (7) days of the Contract award. In the event of conflicts between the terms of the Bid Bond contained in Section 00410 and this Part 8, Section 00410 shall prevail.

**PART 9 CONTRACT TIME**

**9.01** The number of days within which, or the date by which, the Work is to be completed is set forth in the Bid Form and will be included in the Agreement.

**PART 10 LIQUIDATED DAMAGES**

**10.01** Provisions for liquidated damages are set forth in the Agreement.

**PART 11 SUBSTITUTE MATERIAL AND EQUIPMENT**

**11.01** The Contract, if awarded, will be executed with the Successful Bidder on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or “or-equal” items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the “effective date of the Agreement”. The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in the General Conditions which are supplemented in the Supplementary Conditions.

**PART 12 SUBCONTRACTORS**

**12.01** The Bid Form requires that Bidder identify certain Subcontractors and other persons and organizations as part of the Bid. The apparent Successful Bidder must make submittals in accordance with Part 17. Any other Bidder so requested, shall, within seven (7) days after the date of the Bid opening, submit to Owner a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work as to which such identification is so required. Such



list shall be accompanied by a written statement of qualifications including financial data, a summary of previous experience, previous commitments, and evidence of authority to conduct business in the jurisdiction where the Project is to be located. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, either may (before giving the Notice of Award) require the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid Price. If the apparent Successful Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but declining to make any such substitution will not constitute grounds for sacrificing Bid Security by such Bidder. Any Subcontractor, other person or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award, will be deemed acceptable to Owner and Engineer.

**12.02** No Contractor shall be required to employ any Subcontractor, other person, or organization with respect to whom the Bidder has reasonable objection.

**12.03** In no event shall more than fifty percent (50%) of the work be subcontracted by Contractor.

## **PART 13 BID FORM**

**13.01** One copy of the Bid Form are included herewith; additional copies and computer disks may be obtained from Engineer.

**13.02** The Bidder shall submit a completed Bid Form, filled out in ink or by typewriter. Bid prices must be stated in words or numerals, or both, as required on the bid form. In case of a conflict between the words and numerals, the words will take precedence.

**13.03** Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

**13.04** Bids by partnerships must be executed in the partnership name and signed by a partner whose title must appear under the signature and the official address of the partnership must be shown below the signature.

**13.05** Bids by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant.

**13.06** The names of all persons signing Bids must also be legibly printed or typed below the signature. A Bid by a person who affixes to his signature the word "president," "secretary," "agent," or other designation without disclosing the principal may be held to be the Bid of the individual signing. Evidence of the authority of the person signing shall be furnished.

- 13.07** The full name of each person or company interested in the Bid shall be listed on the Bid Form.
- 13.08** The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which shall be inserted on the Bid Form.
- 13.09** No alterations in Bids, or in the printed forms therefor, by erasures, interpolation, or otherwise will be acceptable unless each such alteration is signed or initialed by the Bidder; if initialed, Owner may require the Bidder to identify any alteration so initialed. No alteration in any Bid, or in the form on which it is submitted, shall be made after the Bid has been submitted.
- 13.10** The address to which communications regarding the Bid are to be directed must be shown.

#### **PART 14 SUBCONTRACTOR LISTING**

- 14.01** Each Bidder shall list on the form provided, the name and the address of each Subcontractor who will perform work or labor in an amount in excess of \$10,000 or render service to the Bidder in or about the Work. Each Bidder shall also list on the form provided, the name and the address of each licensed Subcontractor who, under subcontract to the Bidder, specifically fabricates and installs a portion of the Work, in an amount in excess of \$10,000 describing the portion of the Work which will be performed by such Subcontractor. The license number for each electrical and mechanical Subcontractor shall be included in the listing.

#### **PART 15 EQUIPMENT SUPPLIER LISTING**

- 15.01** Each Bidder shall list on the form provided the name of the manufacturers or suppliers of the items of equipment and systems listed on the form which it proposes to furnish. Upon the award of a contract, the named equipment shall be furnished. Substitutions will be permitted only if named equipment does not meet the specifications or the manufacturer is unable to meet delivery requirements of the construction schedule.
- 15.02** Preliminary acceptance of equipment listed by manufacturer's name shall not in any way constitute a waiver of the specifications covering such equipment; final acceptance will be based on full conformity with the specifications covering the equipment.
- 15.03** Failure to furnish all information requested may be cause for rejection of the Bids.

#### **PART 16 SUBMISSION OF BIDS**

- 16.01** Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be included in an opaque, sealed envelope addressed to Owner and identified on the outside with the Bidder's name and address and with the words "Bid for **66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project.**"

**16.02** Each Bid shall be accompanied by the Bid Security and other required documents.

**16.03** If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "**BID ENCLOSED**" on the face thereof.

**16.04** Bids shall be deposited in the designated location prior to the time and date for receipt of Bids indicated in the Invitation to Bid, or the modified time and date indicated by addendum. Bids received after the time and date for receipt of Bids may be returned unopened. Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**16.05** Oral, telephone, or telegraph Bids are invalid and will not receive consideration. No Bidder may submit more than one Bid. Multiple Bids under different names will not be accepted from one firm or association.

## **PART 17 POST BID/PRE AWARD SUBMITTALS**

**17.01** The low Bidder identified by Owner must submit the following information by hand delivery to Engineer by 10:00 A.M. on the day following the Bid opening:

- A. List of a minimum of five recent similar projects the Contractor has performed.
- B. Copy of the most recent financial statement of the Bidder.
- C. Copies of the most recent financial statements of all listed Subcontractors included in the Bid submittal.
- D. List of Project Managers and Superintendents to be used on this project for the Bidder and all listed Subcontractors. Provide resumes and recent projects for all of the above.
- E. Names and telephone numbers of a minimum of five references on similar work for the Bidder and all listed Subcontractors.
- F. Names, relevant experience, and position of individual who will perform Site surveying if not a licensed Surveyor.
- G. License number of Bidder and all listed Subcontractors.

**17.02** The above information must be available at the time and place indicated to be considered in further evaluation, and therefore, all Bidders are recommended to compile this data prior to submitting their Bid.

## **PART 18 MODIFICATION AND WITHDRAWAL OF BIDS**

**18.01** Bids submitted early may be modified or withdrawn by notice to the party receiving Bids at the place and prior to the time designated for receipt of Bids.

Such notice shall be in writing over the signature of the Bidder or be by telegram; if by telegram, written confirmation over the signature of the Bidder must have been mailed and postmarked on or before the date and time set for receipt of Bids; the notice shall be so worded as not to reveal the amount of original or modified Bid Price. Bids may also be modified or withdrawn in person by the Bidder or an authorized representative provided he can prove his identity and authority. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

- 18.02** If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid Security will be returned. Thereafter, the Bidder will be disqualified from further Bidding on the Work. No right to claim mistake shall exist for Bidders following this twenty-four (24) hour period.

**PART 19 OPENING OF BIDS**

- 19.01** Bids will be opened publicly and read aloud.

**PART 20 BIDS TO REMAIN OPEN**

- 20.01** All Bids shall remain open for sixty (60) days after the date of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

**PART 21 AWARD OF CONTRACT**

- 21.01** Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to negotiate contract terms with the Successful Bidder, to require statements or evidence of Bidder's qualifications, including financial statements, and to accept the proposal that is in the opinion of the Owner in its best interest. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 21.02** In evaluating Bids, Owner may consider the qualifications of the Bidders and whether or not the Bids comply with the prescribed requirements and alternates (if any are accepted) in the order in which they are listed on the Bid Form, but Owner may accept alternates in any order or combination.
- 21.03** Owner may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be

submitted as provided in the Bid Form. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Owner.

**21.04** Owner may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, the proposed Subcontractors, and other persons and organizations to do the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

**21.05** Owner reserves the right to reject the Bid of any Bidder who does not pass any evaluation to Owner's satisfaction within the prescribed time.

**21.06** If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within sixty (60) days after the date of the Bid opening.

**PART 22 BONDS AND INSURANCE**

**22.01** The General Conditions set forth the Owner's requirements for a Performance Bond and Labor and Materials Payment Bond and the insurance requirements. When the Successful Bidder delivers the copies of the executed Agreement to Owner, it shall be accompanied by the required bonds, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies.

END OF SECTION

SECTION 00300 BID FORM

**BID FORM**  
(Exhibit "A" to Contract)

TO: Owner: Colorado International Center Metropolitan District  
No. 7  

---

1401 Lawrence St. Suite 1600  

---

Denver, CO 80202  

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PROJECT: 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project

THE UNDERSIGNED BIDDER, having familiarized itself with the work required by the Contract Documents, the Site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied itself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into the Agreement in the form attached, to perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated into and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

**COMPUTER OUTPUT BID FORMS ATTACHED**

- A. **BASE BID PRICE:** Four Hundred Fifty Six Thousand Six Hundred Thirty Five Dollars (\$ 456,635.00 ).
- B. **BID FORM DISCREPANCIES:** Add/deduct the following to/from above base bid for Bid Form Discrepancies: N/A Dollars (\$ N/A ).

The undersigned Bidder agrees to furnish the required Bonds, certificates of insurance on ACORD Form 27, and copies of applicable insurance policies and enter into the Agreement within TEN (10) days after acceptance of this Bid, and further agrees to complete all work covered by the Bid, in accordance with specified requirements and in accordance with the following schedule:

- |    |   |   |
|----|---|---|
| 1. | Material Procurement:                         | 150 Calendar Days from<br>Notice of Award       |
| 2. | Substantial Completion (Ready for Punchlist): | 120 Calendar Days from<br>Notice to Proceed     |
| 3. | Punchlist Complete:                           | 30 Calendar Days from<br>Substantial Completion |

**C. LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially completed within the time specified above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

- |    |  |                          |
|----|--|--------------------------|
| 1. | Late Startup of all Major Equipment                  | \$2,000 Per Calendar Day |
| 2. | Late Substantial completion<br>(ready for Punchlist) | \$2,000 Per Calendar Day |
| 3. | Late Punchlist Completion                            | \$2,000 Per Calendar Day |

**D. ADDENDA.** Receipt of copies of the following addenda is hereby acknowledged.

<u>Addendum No.</u>	<u>Bidder's Signature</u>	<u>Date Acknowledged</u>
Addendum #1		8/1/2022

**E. BID SECURITY.** Enclosed herewith is the required Bid Security, in the form of Cashier's Check/Bid Bond (strike one), in the amount of ~~Forty Five Thousand Six Hundred~~ ~~Sixty Three Dollars and Fifty Cents~~ Dollars (\$ 45,663.50 ) which the undersigned Bidder agrees is to be forfeited to and become the property of Owner, as liquidated damages, in connection with the Bid Security, should this Bid be accepted and Bidder fails to enter into the Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, or should Bidder fail to enter such agreement and give such bond or bonds, if Bidder fails to pay to Owner the difference between the amount specified in this Bid and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by this Bid, but otherwise the Bid Security will be returned upon







**SIGNATURE OF BIDDER**

Date: July 22, 2022

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature)  
General Partner  
print or type name: \_\_\_\_\_

If a Corporation: Dynalectric Company  
(a C Delaware Corporation)  
by: (Signature) Gina M Cullen  
print or type name: Gina M. Cullen  
Title: President & CEO, Colorado

Attest: (Signature)  
Title: Proposal and Marketing Specialist

If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: \_\_\_\_\_  
If Joint Venture is \_\_\_\_\_

If an Individual: (Signature)  
print or type name: \_\_\_\_\_  
doing business as: \_\_\_\_\_

If a Partnership: \_\_\_\_\_  
by: (Signature)  
General Partner  
print or type name: \_\_\_\_\_

If a Corporation: \_\_\_\_\_  
(a \_\_\_\_\_ Corporation)  
by: (Signature)  
print or type name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

END OF SECTION

**Colorado International Center Metropolitan District No. 7 66th, 68th Ave and Denali St. Street Lighting Project**

**Section A - Lighting**

Item No.	Description	Quantity	Unit	Unit Price	Extension
100	SL- 3 Street Lights and Concrete Foundations CIP- Install Only	9	EA	\$ 2,923.00	\$ 26,307.00
101	SL- 3 Street Lights and Concrete Foundations CIP	32	EA	\$ 6,961.00	\$ 222,752.00
102	Street Light Meter Pedestal	2	EA	\$ 12,250.00	\$ 24,500.00
103	City of Aurora Pull Box	3	EA	\$ 1,459.00	\$ 4,377.00
104	2" Conduit	6828	LF	\$ 9.01	\$ 61,520.28
105	Bored Conduit (Under Roadway)	175	LF	\$ 23.77	\$ 4,159.75
106	#2 Wire	1772	LF	\$ 4.79	\$ 8,487.88
107	#4 Wire	5340	LF	\$ 3.09	\$ 16,500.60
108	#6 Wire	9754	LF	\$ 2.39	\$ 23,312.06
109	#8 Wire	2348	LF	\$ 1.78	\$ 4,179.44
110	#10 Wire	7003	LF	\$ 1.17	\$ 8,193.51
<b>Total Section A:</b>					<b>\$ 404,289.52</b>

**Section B - Potholing**

Item No.	Description	Quantity	Unit	Unit Price	Extension
200	Potholing	20	HR	\$ 288.80	\$ 5,776.00
<b>Total Section B:</b>					<b>\$ 5,776.00</b>

**Section C - General**

Item No.	Description	Quantity	Unit	Unit Price	Extension
300	Project General Conditions	1	LS	\$ 31,847.00	\$ 31,847.00
301	Mobilization	1	LS	\$ 14,722.48	\$ 14,722.48
<b>Total Section C:</b>					<b>\$ 46,569.48</b>

**Total Bid (Sections A, B, C): \$ 456,635.00**

**Dyna  
Clarifications**

100	SL- 3 Street Lights and Concrete Foundations CIP- Install Only	Excl pull box at each fixture per detail
101	SL- 3 Street Lights and Concrete Foundations CIP	Excl pull box at each fixture per detail

SECTION 00410 BID BOND

**BID BOND**

THE STATE OF Colorado )  
 ) ss.  
COUNTY OF [ Adams ] )

**KNOW ALL MEN BY THESE PRESENTS:**

That we, the undersigned, Dynalectric Company \_\_\_\_\_, of the City of Lakewood \_\_\_\_\_, County of Jefferson \_\_\_\_\_ and State of Colorado \_\_\_\_\_ (hereinafter called "**Principal**") as Principal, and Travelers Casualty and Surety Company of America \_\_\_\_\_ (hereinafter called "**Surety**") as surety, a corporation organized and existing under and by virtue of the laws of the State of CT \_\_\_\_\_ and authorized to do business within the State of Colorado and to act as surety on bonds for principals, are held and firmly bound unto Colorado International Center Metropolitan District No. 7 (hereinafter called "**Owner**") as obligee, in the sum of Ten Percent of the Amount Bid Dollars (\$ 10% of Amt. Bid) in lawful money of the United States, for the payment of which sum, well and truly to be made, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has submitted a Bid Form (Proposal) to enter into a certain written agreement with Owner for Construction of 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project, hereinafter referred to as "**Agreement.**"

**NOW, THEREFORE**, the condition of this obligation is such that if (1) Owner shall accept the Bid Form (Proposal) of the Principal and Principal shall faithfully enter into Agreement with the Owner in accordance with the terms of such Bid and give such Bonds as are specified in the Bidding or Contract Documents, or (2) in the event of the failure of Principal to enter such Agreement and give such Bond or Bonds, Principal or Surety shall pay to Owner the difference not to exceed the sum hereof between the amount specified in said Bid and such larger amount for which Owner may in good faith contract with another party to perform the work covered by said Bid, then (3) this obligation shall be null and void, otherwise to remain in full force and effect. The sum of this Bid Bond is not less than ten percent (10%) of the Principal's Bid.

The sum of this Bid Bond is **LIQUIDATED DAMAGES**, and subject to the conditions stated above, shall be forfeited to Owner upon failure of Principal to perform as contemplated in clause (1) or (2) herein.

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

Signed and sealed this 11th day of August, 2022.


  
Witness

PRINCIPAL: Dynalectric Company

By: 

345 Sheridan Boulevard, Lakewood, CO 80226-2448  
(Address)

SURETY: Travelers Casualty and Surety Company of America

By:   
Rita Losquadro, Attorney-in-Fact

One Tower Square, Hartford, CT 06183  
(Address)

Surety's No. 732-321-5600

  
Witness

END OF SECTION



Construction Services Group



August 12, 2022

Crystal Fritts  
Dynalectric Company  
345 Sheridan Boulevard  
Lakewood, CO 80226-2448

**Re: Obligee: Colorado International Center Metropolitan District No. 7**  
**Project: 66th, 68th and Denali Street Street Light Project**  
**ECP: \$590,000.00**  
**Bid Date: 8/25/2022**

Dear Crystal:

Enclosed please find the above captioned bid bond and/or consent of surety executed per your request.

The bid bond and/or consent of surety must be signed by an authorized representative of your company, notarized and sealed with the corporate seal.

We urge you to double-check all signatures, dates, amounts and job descriptions for accuracy. This will avoid the possibility of having a low bid rejected because of a clerical error. Please verify again that the bid bond form we executed is the form required by the specification. In addition, please verify that anything unusual that has been requested by the obligee is attached.

The bid bond authorization is based upon your original estimate. **If the actual bid price exceeds this estimate by 10% or more, please contact us for additional authority!**

Please call our office if you should have any questions or need any further assistance.

Good Luck on your Bid.

Sincerely,

Rita Losquadro  
Assistant Vice President

Your bid results are very important, please mail or fax this information back to the address below within 5 days of the bid opening.

Contractors Name	Contract Price
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

Where did you place \_\_\_\_\_ and your price \$ \_\_\_\_\_

SECTION 00500 AGREEMENT

**AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Colorado International Center Metropolitan District No. 7, a quasi-municipal corporation and political subdivision of the State of Colorado located in the County of Adams, State of Colorado, hereinafter referred to as “**Owner**,” and \_\_\_\_\_, hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

**PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK**

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

**PART 2 CONTRACT DOCUMENTS**

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond
4. Certificates of Insurance;
5. Notice of Award;
6. Notice to Proceed;
7. Drawings and specifications consisting of:
  - A. “66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project July 20, 2022”.
  - B. “66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project Manual July 22, 2022”.
  - C. “Geotechnical Subsurface Exploration Program East 68<sup>th</sup> Ave Preliminary Pavement Design Aug 30, 2021”.

8. Specifications and Standards as follows: City of Aurora
9. Addendum No. 1 to Specifications (Certification required pursuant to Section 8-7.5-102, C.R.S.);
10. Addendum No. \_\_\_\_\_ to Specifications;
11. General Conditions and Supplementary Conditions, if any;
12. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
13. Documentation submitted by Contractor with Bid and prior to Notice of Award;
14. Contractor's Unit Price Form, which is attached hereto and incorporated herein by this reference as **Exhibit A**, (hereafter, "**Contractor's Bid**", the "**Bid**", or the "**Bid Form**");
15. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
16. All documents contained within the Contract Specifications for the Project.

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions). In the event of a conflict between this Agreement and the General Conditions, this Agreement shall control.

C. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. Owner's Representative is Silverbluff Companies (hereinafter called "**Owner's Representative**"), who will assume all duties and responsibilities of, and who will have the rights and authority assigned to Owner's Representative in the Contract Documents. Owner's Representative will make himself available to perform its services under the Contract Documents. Owner's Representative may also undertake some duties and responsibilities assigned to Engineer.

### **PART 4 AGREEMENT PRICE**

A. For the performance of Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor Four Hundred Fifty Six Thousand Six Hundred Thirty Five Dollars and Zero Cents (\$456,635.00), in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in



the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer.

## **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Work will be completed according to the following schedule:

- |   |   |
|---|---|
| <b>1. Material Procurement:</b>                         | <b>150 Calendar Days from Notice of Award</b>       |
| <b>2. Substantial Completion (Ready for Punchlist):</b> | <b>120 Calendar Days from Notice to Proceed</b>     |
| <b>3. Punchlist Complete:</b>                           | <b>30 Calendar Days from Substantial Completion</b> |

B. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

- 1. Late Startup of all Major Equipment: \$2,000 per Calendar day**
- 2. Late Substantial Completion (ready for Punchlist): \$2,000 per Calendar day**
- 3. Late Punchlist Complete: \$2,000 per Calendar day**

## **PART 6 PAYMENT PROCEDURES**

A. On or before the 5th (fifth) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.

C. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

**PART 7 NOT USED**

**PART 8 CONTRACTOR'S REPRESENTATIONS**

A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.

2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, subsurface investigations to define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

6. Contractor certifies that less than fifty percent (50%) of the work has been subcontracted.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

C. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such

term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

D. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

E. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

F. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

G. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

H. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

I. Unless otherwise expressly provided, any reference herein to "days" shall mean calendar days. All times stated in the Contract Documents are of the essence.

J. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor's performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner's furnishing such information to others.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first above written.

**OWNER:**

**Colorado International Center Metropolitan District  
No. 7**

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

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

Phone: \_\_\_\_\_

(SEAL)

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ as \_\_\_\_\_ of Colorado International Center  
Metropolitan District No. 7.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

(SEAL)

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

CONTRACTOR: DYNALECTRIC COMPANY

By: Annalyn Quellan  
Title: PRESIDENT & CEO, COLORADO  
Address: 345 STERIDAN BLVD  
LAKWOOD, CO 80224  
Phone: 303.233.4480

CONTRACTOR'S LICENSE NO.: EC-19  
AGENT FOR SERVICE OF PROCESS: Condemnation Services Company

STATE OF COLORADO )  
COUNTY OF Jefferson ) ss.

Subscribed and sworn to before me this 22 day of November, 2022, by Annalyn Quellan as President & CEO of Dynalectric CO

Witness my hand and official seal.

My Commission expires: December 17, 2025

(SEAL)

Crystal Fritts  
Notary Public

CRYSTAL FRITTS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214048923  
MY COMMISSION EXPIRES DECEMBER 17, 2025

**EXHIBIT A**

Contract Unit Price Form

**Colorado International Center Metropolitan District No. 7 66th, 68th Ave and Denali St. Street Lighting Project**

**Section A - Lighting**

Item No.	Description	Quantity	Unit	Unit Price	Extension
100	SL- 3 Street Lights and Concrete Foundations CIP- Install Only	9	EA	\$ 2,923.00	\$ 26,307.00
101	SL- 3 Street Lights and Concrete Foundations CIP	32	EA	\$ 6,961.00	\$ 222,752.00
102	Street Light Meter Pedestal	2	EA	\$ 12,250.00	\$ 24,500.00
103	City of Aurora Pull Box	3	EA	\$ 1,459.00	\$ 4,377.00
104	2" Conduit	6828	LF	\$ 9.01	\$ 61,520.28
105	Bored Conduit (Under Roadway)	175	LF	\$ 23.77	\$ 4,159.75
106	#2 Wire	1772	LF	\$ 4.79	\$ 8,487.88
107	#4 Wire	5340	LF	\$ 3.09	\$ 16,500.60
108	#6 Wire	9754	LF	\$ 2.39	\$ 23,312.06
109	#8 Wire	2348	LF	\$ 1.78	\$ 4,179.44
110	#10 Wire	7003	LF	\$ 1.17	\$ 8,193.51
<b>Total Section A:</b>					<b>\$ 404,289.52</b>

**Section B - Potholing**

Item No.	Description	Quantity	Unit	Unit Price	Extension
200	Potholing	20	HR	\$ 288.80	\$ 5,776.00
<b>Total Section B:</b>					<b>\$ 5,776.00</b>

**Section C - General**

Item No.	Description	Quantity	Unit	Unit Price	Extension
300	Project General Conditions	1	LS	\$ 31,847.00	\$ 31,847.00
301	Mobilization	1	LS	\$ 14,722.48	\$ 14,722.48
<b>Total Section C:</b>					<b>\$ 46,569.48</b>

**Total Bid (Sections A, B, C): \$ 456,635.00**

**Dyna  
Clarifications**

100	SL- 3 Street Lights and Concrete Foundations CIP- Install Only	Excl pull box at each fixture per detail
101	SL- 3 Street Lights and Concrete Foundations CIP	Excl pull box at each fixture per detail



END OF SECTION

SECTION 00610 BONDS

**A. Performance Bond**

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto Colorado International Center Metropolitan District No. 7 as Obligee, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a One (1) year warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee, and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the

payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

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

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

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

[SEAL]

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

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

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

[SEAL]

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

By: \_\_\_\_\_  
Attorney-in-Fact

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

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-106, C.R.S. This Bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.

**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)

## B. Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto Colorado International Center Metropolitan District No. 7, as Obligee, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

- (1) A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.
- (3) No suit or action shall be commenced hereunder by any claimant:

(i) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Oblige and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.

(ii) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.

(iii) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.

(iv) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.

(4) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanic's liens which may be filed of record against certain improvements, whether or not the claim for the amount of such lien be presented under and against this Bond.

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

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

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

[SEAL]

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

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

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

[SEAL]

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

By: \_\_\_\_\_  
Attorney-in-Fact

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

**NOTE:** This Bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.

**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)

END OF SECTION



SECTION 00660 NOTICE OF AWARD

**NOTICE OF AWARD**

Aurora \_\_\_\_\_, Colorado  
Date: September 14, 2022

TO: Dynaletric Company  
345 Sheridan Blvd  
Lakewood, CO 80226-2448  
\_\_\_\_\_

The Owner, having duly considered the Bid Form submitted on August 25, 2022 for the Work covered by the Contract Documents titled 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project in the amount of Four Hundred Fifty Six Thousand Six Hundred Thirty Five Dollars and Zero Cents (\$456,635.00), and it appearing that the price and other information in your Bid Form is fair, equitable and to the best interest of the Owner, the offer in your Bid Form is hereby accepted.

In accordance with the terms of the Contract Documents, you are required to execute the Agreement in three (3) counterparts within ten (10) consecutive days from and including the date of this Notice of Award.

In addition, you are required to furnish at said time your Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies evidencing compliance with the requirements for insurance as stated in the Contract Documents.

The Bid Security submitted with your Proposal will be returned upon execution of the Agreement, furnishing of the required Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies within the time limit specified. In the event that you should fail to execute the Agreement and provide the executed Performance Bond and Labor and Materials Payment Bond within the time limit specified, said security will be retained by the Owner as liquidated damages and not as a penalty for the delay and extra work caused thereby.

You are required to return an acknowledged copy of this Notice of Award to Owner.

**Colorado International Center Metropolitan  
District No. 7**

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

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF AWARD:

Receipt of the above Notice of Award is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

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

END OF SECTION

SECTION 00670 NOTICE TO PROCEED

**NOTICE TO PROCEED**

Aurora \_\_\_\_\_, Colorado  
Date: \_\_\_\_\_

TO: Dynalectric Company  
345 Sheridan Blvd  
Lakewood, CO 80226-2448  
\_\_\_\_\_

You are hereby authorized to proceed on \_\_\_\_\_, 20\_\_\_\_, or within ten (10) consecutive calendar days thereafter, with the Work as set forth in the Contract Documents.

You are to notify the Engineer forty-eight (48) hours before starting work.

**Colorado International  
Center Metropolitan  
District No. 7**

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

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:

Receipt of the above Notice to Proceed is hereby acknowledged this 21<sup>ST</sup> day of November 2022.

Dynalectric Company  
CONTRACTOR

By: [Signature]  
Title: PRESIDENT & CEO, CALDWAY

END OF SECTION

SECTION 00680 CHANGE ORDER

**CHANGE ORDER**

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** Colorado International Center Metropolitan District No. 7 **Change Order No.:** \_\_\_\_\_

**Address:** c/o \_\_\_\_\_, Construction Manager  
\_\_\_\_\_  
\_\_\_\_\_

**Contractor:** \_\_\_\_\_ **Construction Manager:** \_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Purpose of Change Order: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attachments (List Documents Supporting Change): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIME:**

Original Contract Price:  
\$

Original Contract Time:  
(days or dates)

Previous Change Orders:  
No. \_\_\_\_\_ to No. \_\_\_\_\_  
\$

Net Change from Previous Change Order:  
(days)

Contract Price Prior to this Change Order:

Contract Time Prior to this Change Order:  
(days or date)

\$

Net Increase of this Change Order:

Net Increase of this Change Order:

(days)

\$

Net Decrease of this Change Order:

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

Net Change of this Change Order:

(days)

\$

Contract Price with all Approved Change Orders:

Contract Time with all Approved Change Orders:

(days or date)

\$

RECOMMENDED:

APPROVED:

APPROVED:

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

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

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

END OF SECTION

SECTION 00685 LIEN WAIVER

**A. Waiver of Lien for Partial Payments**

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that he is \_\_\_\_\_ of \_\_\_\_\_, the Contractor for the \_\_\_\_\_ Work on the project located at \_\_\_\_\_, owned by Colorado International Center Metropolitan District No. 7 (the “**Owner**”). That the total amount of the Work performed by the undersigned and approved for payment to date is \_\_\_\_\_, and the undersigned acknowledges that upon receipt of this partial payment, the Contractor has been paid for the Work performed and approved for payment to date the total Agreement Price.

That the undersigned, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in hand paid by \_\_\_\_\_, receipt whereof before the signing and sealing of these presents is hereby acknowledged, does hereby acknowledge receipt of this partial payment due Contractor for Work performed or material furnished in connection with the 66<sup>TH</sup>, 68<sup>TH</sup> Ave and Denali St. Street Light Project.

And the undersigned, for and in consideration of the sum aforesaid, and other good and valuable consideration, does hereby waive and relinquish all right, which Contractor can or may have at this date, to file any lien, mechanics’, materialmen’s or otherwise, against said above property for or by reason of any work performed, or material furnished in connection with the construction of said Project, with the distinct understanding that this waiver shall not be construed as covering any right to file any such lien for work performed or material to be hereafter furnished if such work performed or material furnished hereafter be not on account of the aforesaid mentioned sum. In addition, the undersigned hereby waives and releases any claims against the Owner and its officers or agents in any manner related to or connected with the construction of the Project or the performance of the Work.

The undersigned hereby warrants and represents to the Owner that all suppliers of labor and material to the undersigned on the project have been paid amounts due to date and hereby agrees to indemnify and hold harmless the Owner for any costs incurred due to claims threatened or initiated by such suppliers, including attorneys’ fees.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Company Name)

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

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

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

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

(SEAL)

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

**B. Waiver of Lien for Final Payments**

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that he is \_\_\_\_\_ of the \_\_\_\_\_, who is the Contractor for the \_\_\_\_\_ Work on the project located at \_\_\_\_\_, owned by Colorado International Center Metropolitan District No. 7 (the "Owner"). That the total amount of the contract including extras is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and the undersigned acknowledges that upon receipt of this final payment, the Contractor has been paid in full the total Agreement Price.

That the undersigned, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in hand paid by \_\_\_\_\_, receipt whereof before the signing and sealing of these presents is hereby acknowledged, does hereby acknowledge receipt in full of all sums due Contractor for Work performed or material furnished in connection with the Project, and the undersigned, for and in consideration of the sum aforesaid, and other good and valuable consideration, does hereby waive and relinquish all right, which Contractor can or may have at this date, to file any lien, mechanics', materialmen's or otherwise, against said above property for or by reason of any Work performed, or material furnished in connection with the construction of said Project, with the distinct understanding that this waiver shall not be construed as covering any right to file any such lien for Work performed or material to be hereafter furnished if such Work performed or material furnished hereafter be not on account of the aforesaid mentioned sum. In addition, the undersigned hereby waives and releases any claims against the Owner and its officers or agents in any manner related to or connected with the construction of the Project or the performance of the Work.

The undersigned hereby warrants and represents to the Owner that all suppliers of labor and material to the undersigned on the project have been paid in full and hereby agrees to indemnify and hold harmless the Owner for any costs incurred due to claims threatened or initiated by such suppliers, including attorneys' fees.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_



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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

(SEAL)

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

END OF SECTION

SECTION 00690 NOTICE OF FINAL PAYMENT

**NOTICE OF FINAL PAYMENT**

**NOTICE** is hereby given that Colorado International Center Metropolitan District No. 7 will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on (project description), performed for Colorado International Center Metropolitan District No. 7.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to Colorado International Center Metropolitan District No. 7 \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release Colorado International Center Metropolitan District No. 7 its directors, officers, agents, and employees, of and from any and all liability for such claim.

**BY ORDER OF THE BOARD OF DIRECTORS OF  
COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT NO. 7**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Name of Newspaper)

END OF SECTION

SECTION 00700 GENERAL CONDITIONS

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## **PART 1      DEFINITIONS**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addendum** - Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** - The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** - The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** - The form designated by Engineer 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.

**Bid Form** - The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** - A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** - As defined in the Agreement.

**Contract Time** - The number of days stated in the Agreement for the Completion of the Work.

**Contractor** - The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** - A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** - An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

**Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the parties to sign and deliver.

**Engineer** - The person or entity named as “**Engineer**” in the Agreement.

**Field Order** - A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**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 Agreement.

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

**Notice to Proceed** - A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Colorado International Center Metropolitan District No. 7, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** - The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** - Section(s) of these General Conditions.

**Plans** - The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions,

diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** - Any area or areas where Work is to be performed on the Project.

**Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**Subcontractor** - A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** - The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended, and it is ready for punch listing.

**Supplementary Conditions** - The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract Documents and the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01            DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02            EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and



Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies, and submit all copies to Owner's Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B. Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner's Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

### **2.03 COPIES OF DOCUMENTS**

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

### **2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

### **2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

### **2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

## **2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

## **PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

### **3.01 INTENT**

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. 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. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein. Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. 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 Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### **4.02 PHYSICAL CONDITIONS - INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

#### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

A. Owner shall provide engineering surveys for construction to establish reference points which in its judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for replacement or relocation of such reference points by professionally qualified personnel.

## **PART 5 BONDS AND INSURANCE**

### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall remain in effect at least until **one (1) year** after the date when final payment becomes due, or until the **one-year** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared a bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

### **5.02 CONTRACTOR'S INSURANCE REQUIREMENTS**

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

- (1) Worker's Compensation and Employers' Liability
  - (i) State: Statutory
  - (ii) Employers' Liability  
\$500,000 Each Accident

\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

(iii) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(2) General Liability (Occurrence Form):

(i) Combined Bodily Injury and Property Damage:  
\$1,000,000 each occurrence

\$1,000,000 Personal and Advertising Injury

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

(ii) The following coverages must be included:

(a) Premises Operations

(b) Independent Contractor's Protective

(c) Explosion, Collapse

(d) Underground

(e) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)

(f) Broad Form Property Damage

(g) Personal/Advertising Injury

(h) General Aggregate Limit (applies to each project)

(i) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.

(j) Subcontractors shall comply with all provisions of this Part.

(k) A waiver of subrogation endorsement in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(3) Automobile Liability:

Combined Bodily Injury and Property Damage:  
\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

(4) Umbrella Excess Liability

\$5,000,000 each Occurrence/\$5,000,000 Aggregate

(5) Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

1. The builder's risk insurance policy shall be on an "all risk" basis for the entire Project and shall include (1) coverage for any ensuing loss from faulty workmanship, defective materials, and omission or deficiency in design or specifications, (2) coverage against damage or loss caused by earth movement, flood, fire, hail, lightning, wind, explosion, smoke, water damage, theft, vandalism and malicious mischief and machinery accidents and operational testing, (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project, (4) transit coverage, with sub-limits sufficient to insure the full replacement value of any key equipment item and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. The policy shall provide for coverage in the event an occupancy or use permit is issued for any portion or portions of the Work prior to Substantial Completion of the Work. Builder's risk insurance shall be written in completed value form and shall protect Contractor and Owner. The amount of such insurance shall be not less than the insurable value of the Work at completion less the value of the materials and equipment insured under installation floater insurance and shall provide for recovery on a "replacement cost" basis.

2. Builder's risk insurance shall provide for losses to be payable to Contractor and Owner as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the



coverage provided the insurance company shall have no rights of recovery against the Contractor or Owner.

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

**5.03 INSURANCE CERTIFICATES/POLICY**

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

**5.04 ADDITIONAL REQUIREMENTS**

A. No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B. If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C. The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D. For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## **5.05 INDEMNIFICATION**

A. Contractor shall indemnify save harmless and defend the Owner, the Engineer and all of their consultants, directors, officers, agents and employees, from any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), arising directly or indirectly, in

whole or in part, out of the negligence or any criminal or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors or any person for whom Contractor is responsible, in connection with this Agreement and the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not act as limitations on the Contractor's obligation to indemnify the Owner, Owner's Representative, and each of their consultants, including the Engineer and their directors, officers, agents and employees.

B. In any and all claims against Owner or Engineer or any of their agents or employees or the Owner's Representative by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **PART 6 CONTRACTOR'S RESPONSIBILITIES**

### **6.01 SUPERVISION AND SUPERINTENDENT**

A. The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Owner, Engineer, or Owner's Representative shall not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction or for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B. Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner's Representative. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02**

### **LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the

Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these specifications and which have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

## **6.03 EQUIVALENT MATERIALS AND EQUIPMENT**

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the

item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

## 6.04

### CONCERNING SUBCONTRACTORS

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer.

Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

C. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.



E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work.

## **6.06 PERMITS**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, including but not limited to all inspection charges of agencies having appropriate jurisdiction and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time.

## **6.07 LAWS AND REGULATIONS**

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the "applicable regulations"). If Contractor observes that

the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

## **6.09 USE OF PREMISES**

A. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

C. Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the

obstruction. All material found on the Site or removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

## **6.10 RECORD DOCUMENTS**

A. Contractor shall keep one record of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

## **6.11 SAFETY AND PROTECTION**

A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Work or other persons who may be affected thereby;
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for

any reason and the security of all properly located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall until continue such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be

marked clearly “DANGEROUS EXPLOSIVES,” and shall be in care of competent watchmen at all times.

## **6.12 EMERGENCIES**

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## **6.13 PLANS AND SHOP DRAWINGS**

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the “**Plans**”, the interpretation shall be the Plans as affected by all authorized alterations then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings

will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as

binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

#### **6.14 CONSTRUCTION STAKES**

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer and the Owner. If the Contractor refuses to suspend operations on verbal order, the Owner's Representative shall issue a written order giving the reason for shutting down the Work. After placing the order giving the reason for shutting down the Work and placing the order in the hands of the person in charge, the Owner's Representative shall immediately leave the job. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract.



## 6.15

### PRIVATE PROPERTY AND EXCAVATION

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7 COORDINATION OF WORK**

### **7.01 OWNER'S RIGHT TO PERFORM**

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02 CONTRACTOR TO COORDINATE**

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to 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. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 OWNER TO COMMUNICATE THROUGH ENGINEER OR OWNER'S REPRESENTATIVE**

A. Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

**PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

**9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

**9.02 VISITS TO SITE**

A. 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. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

**9.03 CLARIFICATIONS AND INTERPRETATIONS**

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

**9.04 REJECTING DEFECTIVE WORK**

A. 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 Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

**9.05 NOT USED**

**9.06 DECISIONS ON DISAGREEMENTS**

A. 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 acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to 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. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to

Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A 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 Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

## 9.07

### **LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

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

D. Neither Engineer, nor Owner, nor Owner's Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of

the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

## **PART 10 CHANGES IN THE WORK**

### **10.01 OWNER MAY ORDER CHANGES**

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12 A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

## **PART 11      AGREEMENT PRICE AND CHANGES**

### **11.01      AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER**

A.      The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B.      The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C.      The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1.      The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.

2.      The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D.      If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;
2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
4. In any other manner agreed upon by the parties.

## **11.02 COST OF THE WORK**

A. The term "**Cost of the Work**" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all

returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including, but not limited to, engineers, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

5. Supplementary costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

b. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

c. Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

d. Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

e. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them



may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

f. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

g. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

h. The cost of utilities, fuel and sanitary facilities at the Site.

i. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

B. The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1--all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts

any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be ten percent (10%); and

b. For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be five percent (5%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%) as set forth in Paragraph 11.03A.1.a; and

c. No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the net increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion

period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

## **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

C. All the time limits stated in the Contract Documents are of the essence of the Agreement.

## **PART 13 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. 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 Part 13.

### **13.02 ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

### **13.03 TESTS AND INSPECTIONS**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof

shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

#### **13.05 OWNER MAY STOP THE WORK**

A. If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party.

#### **13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the

Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

**13.07 ONE (1) YEAR CORRECTION PERIOD**

A. If within **one (1) year** after the date of initial acceptance by City of Aurora or Colorado International Center Metropolitan District No. 7 or another entity as might be appropriate, 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 Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. 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, Owner 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. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

**13.08 ACCEPTANCE OF DEFECTIVE WORK**

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

**13.09 OWNER MAY CORRECT DEFECTIVE WORK**

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner 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 Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in 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 Agreement Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement 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 Owner of Owner's rights hereunder.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

## 14.02

### APPLICATION FOR PROGRESS PAYMENTS

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably 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 Applications for Payment. A waiver of lien for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

## 14.03

### CONTRACTOR'S WARRANTY OF TITLE

A. 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 Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").



## 14.04

### REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation). However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make 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 Engineer's or Owner's opinion to protect Owner 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 Owner or Claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,
4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A,

5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and 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 in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within fifteen (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.
2. In lieu of the provisions of Paragraph 14.06.A.1, Owner may take over operation of a facility constituting part of the Work whether or not it

is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing, have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

#### **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of 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 Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), 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 Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all Claims arising out of or filed in connection with the Work. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a Claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Claim.

## **14.09**

### **FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Owner's Representative's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with Owner a receipt in full or an order for withdrawal in writing from claimant.

B. If, through no fault of Contractor, final completion of the Work is significantly delayed and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

## **14.10**

### **CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from

performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by City of Aurora and Colorado International Center Metropolitan District No. 7 or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10 A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

## **15.02 OWNER MAY TERMINATE**

A. Upon the occurrence of any one or more of the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. Failure of the Contractor to start the Work on the date given in the Notice to Proceed,
10. Substantial evidence that progress being made by the Contractor is insufficient to complete the Work within the specified time,
11. Deliberate failure on the part of the Contractor to observe any requirement of these Specifications,
12. Failure of the Contractor to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,

13. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or

14. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if a satisfactory effort has not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until it is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

### **15.03**

#### **CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of

terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

#### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.
6. Transfer to the Owner, and deliver in the manner, at the times, and to the extent, if any directed by the Owner:
  - a. The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part



of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

b. The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6, but the Contractor:

a. shall not be required to extend credit to any purchaser; and

b. may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

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

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for

profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

a. The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents, timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3 above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7 of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D and the Owner utilizes this Paragraph 15.04.E, no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C and has failed to request an extension of time, it shall have no such right of appeal. In any case where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or
2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.
3. The agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

A. Whenever any provision of the Contract Documents requires the giving of written notice 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 whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

## **16.02 COMPUTATION OF TIME**

A. When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

## **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

## **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from

the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

## **PART 17 ADDRESSES**

### **17.01 OWNER**

A. Owner is named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Colorado International Center Metropolitan  
District No. 7  
1401 Lawrence St Suite 1600 Denver, CO 80202  
Denver, CO 80246

with a copy to: Colin B. Mielke, Esq.  
Seter & Vander Wall, P.C.  
7400 E. Orchard Road, Suite 3300  
Greenwood Village, CO 80111

### **17.02 ENGINEER**

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01D. in the Agreement.

### **17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

**17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

**PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

**PART 19 EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

## **PART 20 STREAMLINED SPECIFICATIONS**

A. These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases “The Contractor shall,” “in conformity therewith,” “shall be,” “as shown on the Drawings,” “a,” “an,” “the,” and “all” are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21 HANDLING OF DISPUTES**

### **21.01 DISPUTES**

A. Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively “**Dispute**”) shall be resolved as follows:

Owner and Contractor shall, upon either party’s written request sent certified mail, attempt to resolve the Dispute by mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association (“**AAA**”) subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator’s fees and expenses and the AAA’s fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective

Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. Any award rendered by the arbitrator(s) may be appealed by either party.

All mediation and arbitration proceedings shall be held in Adams County or such other place as the Owner may designate.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

**PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

**22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. The Owner's Representative shall be Silverbluff Companies.

**22.02 DUTIES AND RESPONSIBILITIES**

**A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

**B. LIAISON:**

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.



C. MODIFICATIONS:

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

D. REPORTS:

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.

2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

E. PAYMENT REQUISITIONS:

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

**22.03 LIMITATIONS OF AUTHORITY**

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.

2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.

3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

END OF SECTION

## SECTION 00800 SUPPLEMENTARY CONDITIONS

### SUPPLEMENTARY CONDITIONS

#### PART 1 SCHEDULES

- A. Schedules required by Part 14.01.A may be handwritten, in graphic or text form.
- B. The Owner intends on issuing a Notice of Award on or about February 7, 2022. All costs required to complete the Project as described within the plans and specifications shall be included in the Bid. A Notice to Proceed is anticipated to be issued on or about February 28, 2022. All work shall be completed as shown in Part 5 of the Agreement Form.

#### PART 2 WARRANTY START DATE

- A. The effective start date of the **one year** warranty period is the date that the Owner, City of Aurora, or another public entity as may be appropriate initially accepts improvements for the required warranty period. (See General Conditions Part 14.10 A)

#### PART 3 BID FORM

- A. Please insert the “Bid Form-Exhibit A” provided electronically, into your bound Project Manual after Section 00300 “Bid Form”.

#### PART 4 TECHNICAL REQUIREMENTS

- A. EARTHWORK:
  - 1. The site shall be returned to the existing grades before disturbance of that area.
  - 2. All backfill shall be compacted per CoA specifications.
  - 3. Soil classification and compaction testing should also be performed as subgrades are scarified and fill is placed. Moisture conditioning and compaction control is provided in the referenced geotechnical report and is based on the soil classification. The compaction requirement is hereby modified to be 95% of standard or modified (depending on the soil classification as per the referenced report) Proctor maximum dry density. Moisture conditioning should meet the requirements shown in the geotechnical report based.

4. All removals shall be removed from the site with disposal costs included in the bid price.
5. All disturbed areas outside of the construction area shall be returned to its original condition.

B. WATER:

1. The Contractor shall secure all required permits for all water required to complete this project. All costs associated with the use of the water shall be included in the pricing of this bid.

D. PROSECUTION OF WORK:

1. The contractor shall submit for Engineer approval, prior to starting of field activities, a plan that best describes the Contractor's means and methods to complete the Work. The Work Statement should include at a minimum: procedures; production rates; type and number of equipment pieces and manpower; an overview on the sequence of activities; and any special operations.

E. TRAFFIC CONTROL:

1. All costs associated with preparing and submitting a traffic control plan shall be included in the bid costs. Traffic control costs shall be included in the bid costs. The traffic control plan shall be approved by the Owner and City of Aurora.

F. PROJECT SPECIFICATIONS:

1. In addition to performing the work as indicated in the general conditions and construction documents, the general contractor is to obtain, coordinate and provide the standard requirements and details from the City of Aurora and apply those requirements to the work within the site. In the case of any connections or crossover work required between other entities, the most restrictive requirement will apply. Standard details and requirements include, but are not limited to, underground utilities, earthwork, subgrade treatment and paving for roadways, and traffic signage.

G. SURVEY:

1. All survey work shall be performed by a licensed surveyor under the direction of the General Contractor. All cost associated with surveying shall be included in the bid unit costs.

H. EROSION CONTROL:

1. The General Contractor shall select and assign a qualified Erosion Control Supervisor who will be responsible for maintenance erosion control measures as outlined on the plan sheets and included within the work area. All cost associated with the maintenance of these measures shall be included in the bid. This includes all reporting required by the NPDES permit. All permits required shall be obtained and administered by the Contractor until the permit is released by the governing agency.

**PART II WARRANTY START DATE**

1. The effective start date of the **one year** warranty period is the date that City of Aurora or another public entity as may be appropriate initially accepts improvements for the required warranty period. (See General Conditions Part 14.10 A)

END OF SECTION

SECTION 00900 ADDENDA AND MODIFICATIONS

**ADDENDA AND MODIFICATIONS**

**NUMBER** \_\_\_\_\_

**DATE** \_\_\_\_\_

1.01 GENERAL

The following changes, additions, and/or deletions are, by issuance of this Section 00900, made a part of the Project Manual for Colorado International Center Metropolitan District No. 7 dated \_\_\_\_\_, 20\_\_\_\_, as if originally contained therein. Execution of the acknowledgement of receipt shall be the bidders acceptance of the conditions herein set forth. This Section 00900 shall be submitted with and attached to the submitted Bid Form. Failure to do so may result in rejection of the Bid.

1.02 Bidder shall complete Addendum No. 1 attached hereto regarding compliance with Section 8-17.5-102, C.R.S.

1.03 MODIFICATIONS TO SPECIFICATIONS

A. PAGE \_\_\_\_\_, SECTION \_\_\_\_\_ “ \_\_\_\_\_ ”, PART \_\_\_\_\_ “ \_\_\_\_\_ ”, PARAGRAPH \_\_\_\_\_:

1.04 MODIFICATIONS TO DRAWINGS

A. SHEET \_\_\_\_\_ OF \_\_\_\_\_  
“ \_\_\_\_\_ ”:

ACKNOWLEDGEMENT OF RECEIPT

Receipt is acknowledged this \_\_\_\_\_ day of 20\_\_\_\_\_.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Title

## ADDENDUM NO. 1

By execution of this addendum (“**Addendum**”) to that certain Bid Form dated \_\_\_\_\_, 20\_\_\_\_, with respect to the Project Manual for Colorado International Center Metropolitan District No. 7 (the “**Owner**”) and \_\_\_\_\_ (the “**Contractor**”) (“**Agreement**”), the parties to the Agreement further agree as follows:

01 Pursuant to the requirements of Section 8-17.5–102(1), C.R.S., the Contractor hereby certifies to the Owner that the Contractor does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Contractor who are newly hired to perform work under the Agreement.

02 In accordance with Section 8-17.5-102(2)(a), C.R.S., the Contractor shall not:

00 Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

01 Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

03 The Contractor represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

04 The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

05 If the Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

00 Notify the subcontractor and the Owner within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

01 Terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

06 The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“**Department**”) made in the course of an investigation that the Department is undertaking, pursuant to the law.

07 If the Contractor violates any provision of this Addendum, the Owner may terminate the Agreement immediately and the Contractor shall be liable to the Owner for actual and consequential damages of the Owner resulting from such termination, and the Owner shall report such violation by the Contractor to the Colorado Secretary of State, as required by law.

IN WITNESS WHEREOF, the Parties have executed this Addendum on \_\_\_\_\_, 20\_\_\_\_.

OWNER:

**COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT NO. 7**

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

CONTRACTOR:

*Dynatectric Company*

By: *[Signature]*

Its: BINAM. CULLEN  
*PRESIDENT & CEO, COLORADO*

END OF SECTION

## AMENDMENT TO CONTRACT

66<sup>th</sup>, 68<sup>th</sup> Ave and Denali Street Light Project – Dynalectric Company

This Amendment to Contract (“**Amendment**”) is entered into this \_\_\_\_ day of December, 2022, by and between **COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO 7**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **DYNALECTRIC COMPANY**, a Delaware corporation authorized to conduct business in the State of Colorado (the “**Company**”) (together, the “**Parties**”).

### RECITALS

WHEREAS, the Parties entered into that certain Project Manual and Contract Documents Aurora Crossroads Subdivision Street Light Package dated July 22, 2022 (the “**Agreement**”); and

WHEREAS, Section 5.04 of the Agreement requires the Company to maintain insurance with a maximum deductible of \$1,000 or an approved amount; and

WHEREAS, the Company is a subsidiary of EMCOR Group, which maintains general liability insurance and automobile liability insurance policies with comprehensive deductibles of \$500,000 for all EMCOR Group’s subsidiaries (“**EMCOR Policy**”); and

WHEREAS, the District has determined that the EMCOR Policy provides adequate protection for the District with regard to the services being provided under the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to authorize the Company to perform its services under the EMCOR Policy.

NOW THEREFORE, the Parties agree as follows:

### COVENANTS AND AGREEMENTS

1. Amendment to Deductible Limit. The Agreement is amended to allow for the deductible limit as set forth in the letter attached hereto and incorporated herein as **Exhibit A**.
2. Safety Clause. All other portions of the Agreement not amended herein shall remain in full force and effect.

**[Signature Page to Follow]**



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

**COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT NO 7**, a quasi-  
municipal corporation and political subdivision of  
the State of Colorado

---

Attest:  


**DYNALECTRIC COMPANY**, a Delaware  
Corporation authorized to conduct business  
in the State of Colorado



By: 

Name: Gina M Cullen  
Title: Authorized Signatory

**Exhibit A**  
**to Amendment to Contract between**  
**Aurora High Point at DIA Metropolitan District and Dynalectric Company**



Brian Lynch

Marsh USA Inc.  
1166 Avenue of the Americas  
New York, NY 10036-2774  
+1 212 346 6000  
www.marsh.com

June 21, 2021

64th Avenue ARI Authority  
Aurora High Point at DIA Metropolitan District  
18591 E. 64th Avenue  
Denver, CO 80249

**Verification of General Liability and Auto Liability Deductibles**

To Whom it May Concern

This letter is to confirm that deductible for the General Liability policy (Policy # GL 6081316313) and Auto Liability policy (Policy # BUA 6081316330) for EMCOR Group Inc. and its subsidiaries, including Dynalectric Colorado is \$500,000 and has been operating at this level for the last 10+ years.

Regards,

*Brian Lynch*

Brian Lynch

A business of Marsh McLennan

## FACILITIES ACQUISITION AGREEMENT

This **FACILITIES ACQUISITION AGREEMENT** (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between **COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 7**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), **DG STRATEGIC VII, LLC**, a Tennessee limited liability company (the “**Owner**”), and **HIGHPOINT NORTH ACQUISITION LLC**, a Minnesota limited liability company (the “**Developer**”) (individually, each a “**Party**” and collectively, the “**Parties**”).

### RECITALS

A. The Developer is developing property within the City of Aurora, Colorado, which is part of a project commonly known as High Point Nort (the “**Property**”).

B. The Property is within the boundaries of Colorado International Center Metropolitan District No. 11 (“**District No. 11**” and, collectively with the District, the “**Districts**”) and the service area of the District.

C. Pursuant to the authority granted to the Districts by their respective Service Plans, as approved by the City Council for the City of Aurora (the “**City**”) on August 30, 2004, and each as modified by a Modified Service Plan approved by the City Council on August 14, 2006, and each as amended by a First Amendment to the Modified Service Plan approved by the City Council on August 17, 2020, and as they may be amended from time to time (collectively, the “**Service Plan**”), the Districts are authorized to construct, acquire and install public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, fire protection, television relay and translation, and mosquito control and other facilities and services (“**Improvements**”), which benefit property within the Districts’ boundaries and/or service area.

D. The Districts have entered into a Master Intergovernmental Agreement whereby the District has agreed to provide for the financing, construction, acquisition, operation and maintenance of the Improvements for the benefit of both the Districts and their constituents.

E. The Improvements are necessary for the development of the Property.

F. The District and the Developer have entered into that certain Facilities Funding and Acquisition Agreement dated October 7, 2021 (the “**Developer Acquisition Agreement**”) whereby the Developer may cause construction of certain of the Improvements subject to verification and payment of costs associated therewith by the District in accordance with the terms of the Developer Acquisition Agreement.

G. Owner has purchased certain property within the boundaries of District No. 11 (the “**Owner Property**”).

H. Owner, Developer, the Districts and HighPoint BULWIP Acquisition, LLC, have entered into a Facilities Completion Agreement dated May 6, 2022 (the “**Owner FCA**”) whereby

the parties to such Owner FCA agreed to certain terms to ensure the completion of certain PSA Improvements (as more particularly defined in the Owner FCA), which PSA Improvements comprise a portion of the Improvements.

I. The District has issued its \$40,115,853.60 (Value at Issuance) Convertible Capital Appreciation Limited Tax General Obligation Bonds, Series 2021 (“**2021 Bonds**”) and, in accordance with the requirements of the Developer Acquisition Agreement, anticipates utilizing proceeds thereof to pay for Improvements, including costs of the PSA Improvements.

J. In order to develop the Owner Property, the Owner will be installing certain additional Improvements more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Owner Improvements**”).

K. It is anticipated that the proceeds of the 2021 Bonds will not be sufficient to fund the Owner Improvements and, therefore, the District has determined that for reasons of economic efficiency and timeliness it is in the best interests of the District for the Owner to construct or cause construction of the Owner Improvements.

L. It is anticipated that the District will issue bonds in the future, the proceeds of which may be utilized in part to reimburse the Owner for costs incurred for the Owner Improvements (“**Future Bonds**”), including but not limited to, all costs of design, testing, engineering, acquisition, construction, related consultant fees, and construction management (“**Construction Costs**”).

M. The District and Owner desire to set forth their respective rights, obligations and procedures with respect to the District’s acquisition of and reimbursement to the Owner for the Owner Improvements and to set forth and acknowledge the priority for such repayment as between the Owner and Developer. as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

## **COVENANTS AND AGREEMENTS**

1. Incorporation of Recitals. The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

2. Construction of Owner Improvements. The Owner agrees to design, construct, and complete the Owner Improvements in full conformance with the design standards and specifications as established and in use by the District, if applicable, and other entities with proper jurisdiction pursuant to the provisions of this Agreement. If the District so requests, the Owner shall provide periodic reports on the status of completion and costs of the Owner Improvements.

3. Construction Contract Requirements. Any construction contract for all or any portion of the Owner Improvements shall require the contractor and/or the Owner to provide a warranty for the period of time between initial acceptance and final acceptance of the Owner Improvements by the appropriate accepting jurisdiction, together with a security mechanism to

secure the warranty approved by the District or as required by the applicable government entity to which the Owner Improvements will be dedicated.

4. Acquisition of Improvements. The District shall acquire the Owner Improvements after preliminary acceptance from the appropriate accepting jurisdiction, and prior to final acceptance upon receipt, review and approval by the District's accountant and engineer of the following:

- (a) As-built drawings for the Owner Improvements to be conveyed;
- (b) Lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, in a form acceptable to the District;
- (c) An assignment from the Owner to the District of any warranties associated with the Owner Improvements, in a form acceptable to the District, such as a warranty agreement;
- (d) Copies of all contracts, pay requests, change orders, invoices and evidence of payment of same, the final AIA payment form (or similar form approved by the District), canceled checks, and any other requested documentation to verify the amount of reimbursable Construction Costs requested;
- (e) Such other documentation, records and verifications as may reasonably be required by the District; and
- (f) An executed Bill of Sale conveying the Owner Improvements to the District, substantially in the form attached hereto as **Exhibit B**.

5. Certification of Construction Costs. The Parties hereby agree that a condition precedent to the District's acquisition of the Owner Improvements and obligation to reimburse the Owner for Construction Costs shall be the District's receipt of a written certification of an independent engineer engaged by the District that the Construction Costs of the Owner Improvements are reasonable and comparable to the costs of similar public improvements constructed in the Denver Metropolitan Area. Such independent engineer's determination shall be conclusive regarding the amount of Construction Costs the District shall be obligated to reimburse the Owner under this Agreement ("**Certified Construction Costs**"), notwithstanding the fact that the actual Construction Costs incurred by the Owner may exceed the Certified Construction Costs.

6. Reimbursement. Subject to the receipt of funding as set forth in Section 7, the District agrees to reimburse the Owner for Certified Construction Costs up to a maximum amount of \_\_\_\_\_ Dollars (\$\_\_\_\_) ("**Maximum Reimbursement Amount**"), together with interest thereon, unless otherwise agreed to in writing by the Parties. Certified Construction Costs shall accrue interest from the date such costs are incurred by the Owner. Simple interest shall accrue on amounts reimbursable to the Owner under this Agreement, until paid, at the rate of eight percent (8.00%) per annum.

7. Funding and Priority. The Parties agree that no payment shall be required of the District to Owner hereunder unless and until the District issues Future Bonds in an amount sufficient to reimburse the Owner for all or a portion of the Certified Construction Costs. The District may, however, make payments from available funds after the payment of the District's annual debt service and operations and maintenance expenses. The Owner agrees that, to the extent that any amounts are still owed under this Agreement after the District issues Future Bonds, any obligation to pay such amounts is subordinate to such Future Bonds. The Parties agree that payments by the District to the Owner shall credit first against accrued and unpaid interest and then to the principal amount due. The District agrees to exercise reasonable efforts to issue Future Bonds to reimburse amounts owed to the Owner under this Agreement. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse the Owner hereunder, but that this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation for the purposes of Article X, Section 20 of the Colorado Constitution, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by the District. By acceptance of this Agreement, Owner agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder and in the District's Service Plan. **The Parties agree that the proceeds of the 2021 Bonds shall not be available to pay the Certified Construction Costs hereunder. The Developer shall be entitled to seek reimbursement for construction of Improvements under the Developer Acquisition Agreement up to the full amount of proceeds available from the 2021 Bonds. The Parties agree, however, that Owner shall have a priority right to reimbursement for the Certified Construction Costs hereunder from proceeds of the Future Bonds, up to the Maximum Reimbursement Amount.**

8. Representations. The Owner hereby represents and warrants to and for the benefit of the District as follows:

(a) The Owner is a Tennessee limited liability company in good standing and qualified to conduct business under the laws of the State of Colorado.

(b) The Owner has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the Owner with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which the Owner is a party or by which the Owner is or may be bound. The Owner has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) The Owner represents that it has sufficient available funds to fulfill its obligations under this Agreement.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by the Owner to the District for the entire term of this Agreement.

9. Term; Repose. CONSULT WITH SHAREHOLDER Notwithstanding anything set forth in this Agreement to the contrary, the District shall not be obligated to the Owner for costs incurred by the Owner, but not invoiced (as evidenced by the delivery of the documents described in Section 4 above) to the District within \_\_\_\_\_ (\_\_\_\_) days of the date incurred. In the event the District has not reimbursed the Owner for any portion of the Certified Construction Costs and/or Organization Expense] by December 31, 20\_\_\_\_ LESSER OF 40 YEARS OR THE USEFUL LIFE OF IMPROVEMENTS AS CALCULATED BY DISTRICT ACCOUNTANT, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

10. Inactive Status: The Owner acknowledges the District may elect to be inactive in any one or more of the years this Agreement is in effect, and the Owner and the District agree that, during the period of inactivity: the District shall have no financial obligations outstanding or contracts in effect that require performance by the District; the District shall not impose a mill levy for tax collection; the District shall not anticipate any receipt of revenue and shall have no planned expenditures, except for statutory compliance, in said fiscal year(s); the District shall have no operation or maintenance responsibility for any facilities; and the District shall file an initial notice of inactive status pursuant to Section 32-1-104, C.R.S., and each year thereafter that the District continues to be inactive, the District shall file a notice of inactive status pursuant to Section 32-1-104(4), C.R.S. By acceptance of this Agreement, Owner agrees that during any period of District inactivity, the District shall have no obligations, including no obligations to make reimbursements, under this Agreement and shall not be required to take any other actions hereunder.

11. Termination of Reimbursement Obligations. Notwithstanding any provision herein to the contrary, the District's obligations to reimburse the Owner for any and all funds advanced or otherwise payable to the Owner under and pursuant to this Agreement (whether the Owner has already advanced or otherwise paid such funds or intends to make such advances or payments in the future) shall terminate automatically and be of no further force or effect upon the occurrence of: (a) the Owner's voluntary dissolution, liquidation, winding up, or cessation to carry on business activities as a going concern; (b) administrative dissolution (or other legal process not initiated by the Owner dissolving the Owner as a legal entity) that is not remedied or cured within sixty (60) days of the effective date of such dissolution or other process; or (c) the initiation of bankruptcy, receivership or similar process or actions with regard to the Owner (whether voluntary or involuntary). The termination of the District's reimbursement obligations as set forth in this Section shall be absolute and binding upon the Owner, its successors and assigns. The Owner, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement in the event that any of the occurrences described in this Section occur.

12. Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-

confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Colorado International Center Metropolitan District No. 7  
c/o Special District Management Services, Inc.  
141 Union Blvd., Ste. 150  
Lakewood, CO 80228  
Attention: Ann Finn  
Phone: 303-987-0835  
Email: [afinn@sdmsi.com](mailto:afinn@sdmsi.com)

With a copy to: McGeady Becher P.C.  
450 East 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203-1254  
Phone: 303-592-4380  
Email: [legalnotices@specialdistrictlaw.com](mailto:legalnotices@specialdistrictlaw.com)



To Owner: DG Strategic VII, LLC  
100 Mission Ridge  
Goodlettsville, TN 37072  
Attn: Javier Blanco and Kacey Levine  
Email: jablanco@dollargeneral.com  
Email: klevine@dollargeneral.com

With a copy to: Rebekah Fisher and Associates, PLLC  
414 Bridge Street  
Franklin, TN 37064  
Attn: Rebekah Fisher, Esq.  
Email: rfisher@rfisherandassociates.com

To Developer: Highpoint North Acquisition LLC  
800 LaSalle Avenue, #1210  
Minneapolis, MN 55402  
Attention: Paul Hyde  
Phone: 612-845-1991  
Email: paul@hyde-dev.com

With a copy to: Lathrop GPM LLP  
500 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Attention: Wade Anderson, Partner  
Phone: 612-632-3005  
Email: wade.anderson@lathropgpm.com

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed email transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

13. Assignment. The Parties shall not assign any of their rights or delegate any of their duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

14. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Owner any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions

in this Agreement by and on behalf of the District and the Owner shall be for the sole and exclusive benefit of the District and the Owner.

15. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

16. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State District Court in and for the County of Adams, Colorado.

17. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

18. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

19. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

21. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

22. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Owner unless the same is in writing and duly executed by the Parties hereto.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE TO FACILITIES ACQUISITION AGREEMENT**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT NO. 7**, a  
quasi-municipal corporation and political  
subdivision of the State of Colorado

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

Attest:

\_\_\_\_\_  
Secretary

**HIGHPOINT NORTH ACQUISITION LLC**, a  
Minnesota limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DG STRATEGIC VII, LLC**, a Tennessee  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

Owner Improvements



**EXHIBIT I**

Improvements

Project Description

Estimated/Actual Cost

**FIRST AMENDMENT TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT – REGARDING COST SHARING OF THE EXTENSION OF DENALI STREET (60<sup>TH</sup> AVENUE TO 66<sup>TH</sup> AVENUE)**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT – REGARDING COST SHARING OF THE EXTENSION OF DENALI STREET (60<sup>TH</sup> AVENUE TO 66<sup>TH</sup> AVENUE)** (“**Amendment**”) is made and entered into as of the 17<sup>th</sup> day of February, 2023, to be effective as of the 7<sup>th</sup> day of December, 2022, by and between **HM METROPOLITAN DISTRICT NO. 1 (“HM 1”)**, **AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT (“AHMD”)**, and **COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 7 (“CIC 7,”** and together with HM 1 and AHMD, the “**Districts**”), all quasi-municipal corporations and political subdivisions of the State of Colorado, (HM 1, AHMD, and CIC 7 may individually be referred to herein as a “**Party**” and collectively referred to as the “**Parties**”).

**WITNESSETH:**

A. The Parties previously entered into that certain Amended and Restated Intergovernmental Agreement – Regarding Cost Sharing of the Extension of Denali Street (60<sup>th</sup> Avenue to 66<sup>th</sup> Avenue), dated December 7, 2022 (the “**Cost Sharing Agreement**”).

B. The Parties have agreed to amend the Cost Sharing Agreement to accurately reflect the General Contractor that AHMD has retained for the project and to clarify the definition of the Denali Street Improvements covered under the Cost Sharing Agreement to reflect that there will be additional work and costs required to complete all of the Denali Street Improvements beyond those reflected in the Cost Sharing Agreement.

C. The Parties desire to amend the provisions of the Cost Sharing Agreement pertaining to the definitions of the General Contractor and the Denali Street Improvements.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties hereto agree as follows:

**COVENANTS AND AGREEMENTS**

1. All terms which are not defined herein shall have the same meaning as set forth in the Cost Sharing Agreement.

2. All references in the Cost Sharing Agreement to “**Denali Street Improvements**” shall be deleted in their entirety and substituted in lieu thereof shall be the phrase “**Denali Street Improvements – Phase I.**”

3. Amendment to Section 5(b) of the Cost Sharing Agreement. Section 5(b) of the Cost Sharing Agreement is hereby deleted in its entirety, and substituted in lieu thereof shall be the following:

(b) **General Contractor.** AHMD engaged American Civil Constructors LLC to serve as the general contractor (the “**General Contractor**”). AHMD has provided a copy of the contract with the General Contractor (the “**GC Contract**”) to HM 1 and CIC 7. The GC Contract, together with any subcontracts issued thereunder, shall be referred to herein as the “**Construction Contracts.**”

4. Except as expressly set forth in this Amendment, all provisions of the Cost Sharing Agreement remain unchanged and in full force and effect, valid and binding on the Parties.

**[SIGNATURE PAGES FOLLOW]**



IN WITNESS WHEREOF, this Amendment is executed by the Parties hereto as of the date first written above.

**AURORA HIGH POINT AT DIA  
METROPOLITAN DISTRICT**

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest:

\_\_\_\_\_  
Secretary

**HM METROPOLITAN DISTRICT NO. 1**

By: \_\_\_\_\_  
Rick Wells, President

Attest:

\_\_\_\_\_  
Secretary

**COLORADO INTERNATIONAL CENTER  
METROPOLITAN DISTRICT NO. 7**

By: \_\_\_\_\_  
Timothy D'Angelo, President

Attest:

\_\_\_\_\_  
Secretary