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PART I - GENERAL CONDITIONS

SECTION 2.

SCOPE AND CONTROL OF THE WORK

2.1. ADDITIONAL INSTRUCTIONS, MODIFICATIONS AND DETAIL DRAWINGS

The engineer may, during the duration of the contract agreement and in accordance with Sections 2-16, 2-17, and 2-18 of these General Conditions, furnish the contractor written instructions, modifications or detail drawings necessary to illustrate changes in the work.

The additional written instructions and detailed drawings thus supplied shall become a part of the contract documents, without invalidating the contract agreement, and the contractor shall perform the work as modified or altered.

2.2. EXECUTION, CORRELATION, INTENT, INTERPRETATION AND FURNISHING OF CONTRACT DOCUMENTS

The contract documents shall be executed in triplicate by the owner and contractor.

By executing the contract agreement the contractor represents that he has visited the sight of the work, familiarized himself with the locale, subsurface and site conditions under which the work is to be performed, and correlated his observations with the available information included with and required by the contract documents.

The contract documents are complementary and what is required by any one shall be as binding as if required by all. The intention of the documents is to include all labor, materials, equipment and incidentals necessary for the proper execution and completion of the work. It is not intended that work not covered under any heading, section, class or trade of the specifications shall be supplied unless it is required elsewhere in the contract documents or is reasonably inferable there from as being necessary to produce the intended results. Words, which have well known technical or trade meanings, are used herein in accordance with such recognized meanings. Well-known technical standards are used herein in accordance with the latest edition and revisions thereof.

Written interpretations necessary for the proper execution or progress of the work, in the form of drawings or other wise, will be issued with reasonable promptness by the engineer and in accordance with any approved schedule, upon written request from the contractor. Such interpretations shall be consistent with and reasonably inferable from the contract documents and may be effected by field order.

Unless otherwise provided in the contract documents, the contractor will be furnished, free of charge, three (3) copies of drawings and specifications necessary for the execution of the work. All drawings and specifications thus furnished shall not be reused on any other project.

2.3. SCHEDULES, REPORTS AND RECORDS

The contractor shall submit to the owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the owner may request concerning work performed or to be performed.

Prior to the first partial payment estimate the contractor shall submit to the engineer schedules indicating:

- A. Partial payments that he anticipates he will earn during the course of the work.
- B. The order in which he proposes to carry on the work, including dates at which he will start the various parts of the work, estimated date of completion of each part; and as applicable:
 - 1. The dates at which special detailed drawings will be required from the engineer.
 - 2. The date that the contractor will submit shop drawings to the engineer.
 - 3. Respective dates that manufacturing will begin, the testing and the installation of materials, supplies and equipment.

Schedules submitted by the contractor shall reflect:

- C. The timely and orderly completion of:
 - 1. Specific portions of the work as called for in the Special Conditions.
 - 2. The work in accordance with allowed contract time.
- D. The inability to perform work on Saturdays, Sundays, holidays or between the hours of 7:00 p.m. and 7:00 a.m. on any working day, without written permission from the engineer.
- E. The safety, adequacy and efficiency of his plant equipment, tools, labor and methods of performing the work.
- F. The availability of materials, equipment and incidentals to be incorporated in the work.
- G. Maintenance and control of traffic.

2.4. DRAWINGS, SPECIFICATIONS, CONFLICTS AND DISCREPANCIES

The intent of the drawings and specifications is that the contractor shall furnish all labor, materials, tools, equipment, incidentals and transportation necessary for the proper execution of the work in accordance with the contract documents to complete the project in an acceptable manner, ready for use, occupancy or operation by the owner.

In case of conflict between the drawings and specifications, the specifications shall govern. Figured dimensions on drawings shall govern over scale dimensions, detailed drawings shall govern over General Drawings and Special Conditions shall govern over Standard Specifications.

Any discrepancies between the drawings and specifications and site conditions; or any inconsistencies, errors, omissions or ambiguities in the drawings or specifications; or any errors or omissions in the layout as given by survey points and instructions shall be immediately reported to the engineer, in writing, who shall promptly verify and correct such inconsistencies or ambiguities in writing. Work performed by the contractor after such discovery, until authorized or corrected by the engineer, shall be done at the contractor's risk.

2.5. SHOP DRAWINGS AND MATERIAL SAMPLES

The contractor shall provide shop drawings, in triplicate, as may be necessary for the prosecution of the work (i.e. vault piping, electrical systems, reinforcing, non-detailed items, etc.) as required by the contract documents. The engineer shall promptly review all shop drawings. The engineer's approval of any shop drawing shall not release the contractor from responsibility for deviations from the contract documents. The approval of any shop drawing, which substantially deviates, from the requirement of the contract documents shall be evidenced by a Change Order.

When submitted for the engineer's review, shop drawings shall bear the contractor's certification that he has reviewed, calculated non-detailed dimensions, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

Portions of the work requiring a shop drawing or material sample submission shall not begin until the shop drawing or submission has been approved by the engineer. A copy of each approved shop drawing and each approved material sample shall be kept in good order by the contractor at the site and shall be available to the engineer.

2.6. MATERIALS, SERVICES, AND FACILITIES

It is understood that, except as otherwise specifically stated in the contract documents, the contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time.

Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.

Manufactured articles, materials and equipment shall be fabricated, furnished, applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer or in accordance with the latest revision to or edition of well known technical standards (i.e. ASTM, AWWA, Colorado Department of Transportation, etc.) referred to in the Specifications or Special Conditions.

Materials, supplies and equipment shall be in accordance with samples submitted by the contractor and approved by the engineer.

Materials, supplies or equipment to be incorporated into the work shall not be purchased by the contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

2.7.

INSPECTION AND TESTING

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards and as required by the contract documents.

The owner shall provide technical personnel, acting under the supervision of the engineer, for the inspection and testing of the work in progress to ascertain that the completed work complies in all respects with the requirements of the contract documents.

If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the contractor, the contractor will give the engineer timely notice of readiness. The contractor will then furnish the engineer the required certificates of inspection, testing or approval.

Neither observations by the engineer nor inspections, tests or approvals by any person shall relieve the contractor from his obligations to perform the work in accordance with the requirements of the contract documents.

The engineer and his representative will at all times have access to the work whenever it is in preparation or in progress. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The contractor will provide proper facilities for such access and observation of the work and also for any inspection thereof.

If any work is covered contrary to instructions or without approval or consent from the engineer, it must if required by the engineer, be uncovered for his examination and properly restored at the contractor's expense.

If any work has been covered which the engineer has not specifically requested to observe prior to its being covered, or if the engineer considers it necessary or advisable that covered work be inspected or tested by others, the contractor, at the engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing as the engineer may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

2.8. SUBSTITUTIONS

Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The contractor may request, in writing, the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalog number, and if, in the opinion of the engineer, such material, article, or piece of equipment is of equal substance and function to that specified, the engineer may approve its substitution and use by the contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by Change Order. The contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the contractor without a change in the contract price or contract time.

2.9. PATENTS

The contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the owner harmless from loss on account thereof, except that the owner shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified by the owner; notwithstanding anything above to the contrary, if the contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information, in writing, to the engineer.

2.10. SURVEYS

The owner shall furnish, at no cost to the contractor, field electronic horizontal and vertical control data at only two control points at each site of the work at the owner's choice of location of control points. From the information provided by the owner, the contractor shall be required to make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

The contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

The contractor shall notify the engineer, in writing, forty-eight hours in advance, of the time and place at which he will require lines and grades in order to perform the Work or obtain measurements for record and payment.

2.11. LICENSES, PERMITS, AND REGULATIONS

All contractors and subcontractors performing work on the project shall have a current City of Rifle Municipal or Building Contractor's License, whichever is applicable to their trade. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the contractor. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the owner, unless otherwise specified. The contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the contractor observes that the Contract Documents are at variance therewith, he shall promptly notify the engineer in writing, and any necessary changes shall be adjusted as provided in the Contract Documents for changes in the work.

2.12. PROTECTION OF WORK, EMPLOYEES, PUBLIC AND PROPERTY

The contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and the public who may be affected thereby, all the work and all the materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including pedestrian and vehicular traffic, trees, shrubs, lawns, fences, walks, pavements, roadways, structures and utilities, shown or not shown on the plans which are not designated for removal, relocation or replacement in the course of construction.

The contractor will comply with all applicable laws, ordinances, rules, regulations and order of any private or public body having jurisdiction. He will notify owners and users of adjacent utilities when prosecution of the work may affect them. He shall keep adjacent highways, streets and private access open to traffic and free of dirt and litter resulting from handling operations. He shall take reasonable precautions to protect private property adjacent to the project from such nuisances as dust, dirt, rock and excessive noise. The contractor shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except such as may be due to errors in the Contract Documents, or caused by agents or employees of the owner.

2.13. EMERGENCIES

In emergencies affecting the safety of life or the work or property at the site or adjacent thereto, the contractor, without special instruction or authorization from the engineer or owner, shall act to prevent threatened damage, injury or loss.

He will give the engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved, except when the emergency is attributed to acts of the contractor in performing the Work.

2.14.

LAWS, ORDINANCES, RULES, REGULATIONS, AND ORDERS

The contractor shall keep himself fully informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the city, county, state, federal or public bodies having jurisdiction affecting the work. He shall provide, erect and maintain all necessary, police, watchmen, flagmen, firemen, shoring, signing, traffic devices, barricades and sanitary facilities, as required by the conditions and progress of the work, and all other necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

The contractor must conform to the rules and regulations of the Industrial Commission of Colorado. Prior to starting excavation the contractor shall obtain from the Commission and file with the engineer a copy of his "Notice of Intent to Excavate."

The contractor shall comply with the requirements of CRS 8-17-101 (1985 Supp.) by employing not less than 80 percent Colorado residents in the several classifications of skilled and common labor employed on the project.

The contractor shall be an equal opportunity employer and adhere specifically to all the City of Rifle resolutions and ordinances pertaining thereto.

The contractor shall protect and indemnify the owner and its agents against any claim or liability arising from or based on the violations of such ordinances, regulations, or laws, caused by the negligent actions of the contractor, his agents or employees.

2.15.

SUPERVISION AND DISCIPLINE BY CONTRACTOR

The contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the contractor as the contractor's representative at the site. The supervisor shall have full authority to act on behalf of the contractor and all communications given to the supervisor shall be as binding as if given to the contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

The contractor shall at all times enforce strict discipline and good order among his employees and shall avoid employing on the project anyone unskilled in the work assigned.

2.16.

CHANGES IN THE WORK

At any time during the progress of the work, the owner, through its city manager, may order alterations or changes in the plans, specifications, character or quantity of work, without invalidating the contract agreement. When the total arithmetic dollar value of all such changes, both additive and deductive, does not exceed 25 percent of the contract price, bid unit or lump sum prices, where applicable, shall be used. Should the dollar value of the changes exceed 25 percent of the contract price, the value of the changes over 25 percent shall be based on negotiated unit or lump sum prices, where applicable.

The engineer, also, may at any time, by issuing a Field Order, make changes in the details of the work, the contractor shall proceed with the performance of any changes in the work so ordered by the engineer unless the contractor believes that such Field Order entitles him to a change in contract price or time, or both, in which event he shall give the engineer written notice thereof within fifteen days after the receipt of the ordered change, and the contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from the owner.

2.17. CHANGES IN CONTRACT PRICE

The contract price may be changed only by a Change Order. The value of any work covered by a Change Order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below.

- A. Contract Unit Prices. If a change is ordered in an item of work covered by a contract unit or lump sum price, then an adjustment in the contract price will be made based upon the increase or decrease in quantity of the contract unit or lump sum price.
- B. Agreed Prices. Adjustments in contract price for changes ordered that are not covered by contract unit or lump sum price or exceed the limitation in Section 2.16, will be determined by agreement between contractor and owner. If unable to reach agreement, the owner may direct the contractor to proceed on the basis of extra work in accordance with Paragraph C.
- C. Extra Work. When the price for extra work cannot be agreed upon, the owner will pay for the extra work based on the accumulation of costs as provided herein below.
 1. Daily Reports by Contractor. At the close of each working day, the contractor shall submit a daily report to the engineer, together with applicable delivery tickets, listing all labor, materials, and equipment for that day, and for other services and expenditures when authorized. An attempt shall be made to reconcile the report daily, and it shall be signed by the engineer and the contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the contractor.
 - a. Labor. The report shall show the names of workers, classifications, and hours worked.
 - b. Material. The report shall describe and list quantities of materials used.
 - c. Equipment. The report shall show type of equipment, size and hours of operation, including loading and transport, if applicable.
 - d. Other Services and Expenditures. Other services and expenditures shall be described in such detail as the engineer may require.

2. Basis for Establishing Costs.

a. Labor. The costs of labor will be the actual cost for wages for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials, or equipment to be incorporated in the work, shall be at invoice or lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery.

The owner reserves the right to approve materials and sources of supply, or to supply materials to the contractor if necessary for the progress of the extra work. No markup shall be applied to any material provided by the owner.

c. Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$400 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed rates approved or authorized by the Colorado Department of Transportation at the time the extra work is performed. (Dataquest-Rental Rate Blue Book)

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

Necessary loading and transportation costs for equipment used in performing the extra work shall be included.

If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the owner than holding it at the work site, it shall be returned, unless the contractor elects to keep it at the work site at no expense to the owner.

The reported rental time for equipment already at the job site shall be the duration of its use on the extra work, commencing at the time it is first put into actual operation on the extra work.

- d. Other Items. The owner may authorize other items, which may be required on the extra work. Such items include labor, services, material and equipment which are different in their nature from those required for the work and which are of a type not ordinarily available from the contractor or any of the subcontractors.

Invoices covering all such items in detail shall be submitted with the request for payment.

- e. Invoices. Vendors' invoices for material, equipment rental, and other expenditures, shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the engineer may establish the cost of the item involved at the lowest price which was current at the time of the report.

3. Markup.

- a. Work by Contractor. The following percentage shall be added to the contractor's costs and shall constitute the markup for all overhead and profits:

| | |
|----------------------------------|----|
| Labor (1.32 x certified payroll) | 15 |
| Materials | 15 |
| Equipment Rental | 15 |
| Other Items and Expenditures | 15 |

To the sum of the costs and markups provided for in this subsection, one percent shall be added as compensation for bond and liability insurance.

- b. Work by Subcontractor. When all or any part of the extra work is performed by a subcontractor, the markup established herein shall be applied to the subcontractor's actual cost of such work, to which a markup of five percent on the subcontracted portion of the extra work may be added by the contractor.

- 4. Any other cause which, in the opinion of the engineer, entitles the contractor to additional time, including but not restricted to acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unforeseeable severe abnormal weather.

2.18. CHANGES IN CONTRACT TIME

The contract time may be changed only by a Change Order. The contractor shall notify the engineer promptly and in writing of any occurrence or conditions which, in the contractor's opinion, entitle him to an extension or reduction in contract time. Such notice shall be submitted in ample time to permit full investigation and evaluation of the contractor's claim. Failure to provide such notice shall constitute a waiver by the contractor of any claim. The engineer shall acknowledge the contractor's notice within seven days of its receipt.

Changes in contract time for the completion of the work shall be stipulated by Change Order:

- A. When changes in the work occur.

- B. When work is suspended by the owner.
- C. For unforeseeable causes beyond the control and without the fault or negligence of the contractor, his subcontractor or supplier and which were not the result of their fault or negligence.
- D. When delays in the progress of the work caused by:
 1. Any act or neglect of the owner, his employees or agents.
 2. Other contractors employed by the owner.
 3. Any delay in furnishing of drawings, information or return of shop drawings by the engineer.
 4. Any other cause which, in the opinion of the engineer, entitles the contractor to additional time, including but not restricted to acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unforeseeable severe abnormal weather.

2.19. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on the date specified in the Notice to Proceed.

The contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the contractor and the owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

A daily charge will be made against the contractor for each working day, including free time, that any work shall remain uncompleted after elapse of contract time. This daily charge, determined by the original contract amount for the project from the table herein below, will be deducted from any money due the contractor. This deduction will not be considered a penalty but as liquidated damages.

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

The schedule of liquidated damages will be:

| Original Contract Amount | | Daily Charge |
|--------------------------|-----------|--------------|
| From | To and | |
| More than | Including | |
| \$ 0 | \$ 25,000 | \$ 270 |
| 25,000 | 50,000 | 465 |
| 50,000 | 100,000 | 540 |
| 100,000 | 500,000 | 950 |
| 500,000 | 1,000,000 | 1,250 |

| | | |
|-----------|------------|-------|
| 1,000,000 | 2,000,000 | 1,400 |
| 2,000,000 | 4,000,000 | 1,750 |
| 4,000,000 | 8,000,000 | 1,970 |
| 8,000,000 | 10,000,000 | 2,050 |

Over \$10,000,000 - daily charge will increase by \$100 increments for each \$2,000,000 over \$10,000,000.

Permitting the contractor to continue and finish the work or any part thereof after elapse of contract time will not operate as a waiver on the part of the City of any of its rights under the contract.

Any deduction assessed as liquidated damages under this section shall not relieve the contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed contractor to complete the work according to contract times.

The contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the contractor has promptly given written notice of such delay to the owner or engineer.

- A. To any preference, priority or allocation order duly issued by the owner.
- B. To unforeseeable causes beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, or of the public enemy, acts of the owner, acts of another contractor in the performance of a contract with the owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unforeseeable severe abnormal weather.

The owner shall have the right to deduct the amount of liquidated damages from any monies due or to become due to the contractor, or to sue for and recover compensation for damages for non-performance of the work, from the contractor and his surety, as stipulated in the contract documents.

2.20. CORRECTION OF WORK

The contractor shall promptly remove from the premises all material and work condemned by the engineer for failing to comply with the contract documents, whether incorporated in the construction or not, and the contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to the owner and shall bear the expense of making good all work and material of other contractors destroyed or damaged by such removal or replacement.

All removal and replacement Work shall be done at the contractor's expense. If the contractor does not take action to remove such condemned work and materials within ten days after receipt of written notice, the owner may remove such work and store the materials at the expense of the contractor.

2.21. SUBSURFACE CONDITIONS

The contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, which jeopardizes the safety of the project and/or persons thereon, notify the owner in writing of:

- A. Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents.
- B. Previously unknown physical or other conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract documents.

The engineer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a Change Order. Any claim of the contractor for adjustment hereunder shall not be allowed unless he has given the required written notice; provided that the engineer may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

2.22. SUSPENSION, DELAY OR INTERRUPTION OF WORK

The owner may, at any time and without cause, suspend the work or any portion thereof for a period of not more than ninety calendar days or such further time as agreed upon by the contractor, by written notice to the contractor and the engineer which notice shall fix the date on which work shall be resumed. The contractor will resume that work on the date so fixed. The contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.

If the performance of all or any portion of the work is suspended, delayed or interrupted as a result of a failure of the owner or engineer to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by Change Order to compensate the contractor for the costs and delays necessarily caused by the failure of the owner or engineer.

2.23.**OWNER'S RIGHT TO TERMINATE OR ABANDON WORK**

If the contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or if he disregards the authority of the engineer, or if he otherwise violates any provision of the contract documents, then the owner may, without prejudice to any other right or remedy and after giving the contractor and his surety a minimum of ten days from delivery of a written notice, terminate the services of the contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the contractor, and finish the work by whatever method he may deem expedient. In such case the contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the contractor. If such costs exceed such unpaid balance, the contractor will pay the difference to the owner. Such costs incurred by the owner will be determined by the engineer and incorporated in a Change Order.

Where the contractor's services have been so terminated by the owner, said termination shall not affect any right of the owner against the contractor then existing or which may thereafter accrue. Any retention or payment of monies by the owner due the contractor will not release the contractor from compliance with the contract documents.

After ten calendar days from delivery of a written notice to the contractor, the owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the contractor shall promptly remove all of his equipment, temporary facilities and supplies from the premise, clean up the project and contiguous properties. Otherwise, the owner shall perform such housekeeping at the expense of the contractor. However, the contractor shall be paid for all work executed and any expense sustained plus reasonable profits as a result of such action by the owner.

2.24.**CONTRACTOR'S RIGHT TO TERMINATE OR STOP WORK**

If, through no act or fault of the contractor, the work is suspended for a period of more than ninety calendar days by the owner or under an order of court or other public authority, or the engineer fails to act on any request for payment within thirty calendar days after it is submitted, or the owner fails to pay the contractor substantially the sum approved by the engineer within thirty calendar days of its approval and presentation, then the contractor may, after ten calendar days from delivery of a written notice to the owner and the engineer, terminate the contract and recover from the owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the engineer has failed to act on a request for payment or if the owner has failed to make any payment as aforesaid, the contractor may upon ten calendar days notice to the owner and the engineer stop the work until he has been paid all amounts then due, in which event and upon resumption of the work, Change Orders shall be issued for adjusting the contract price or extending the contract time, or both, to compensate for the costs and delays attributable to the stoppage of the work.

2.25. SUBCONTRACTING

The contractor may utilize the services of subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

The contractor shall not award work to subcontractor(s), in excess of fifty percent of the total contract price, without prior written approval of the owner.

The contractor shall be fully responsible to the owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the contractor the same power as regards terminating any subcontract that the owner may exercise over the contractor under any provision of the contract documents.

Nothing contained in this contract shall create any contractual relation between any subcontractor and the owner.

2.26. CONTRACT SECURITY

The contractor shall, within seven calendar days after the receipt of the Notice of Award, furnish the owner with a Performance and Payment Bond in the penal sum of the total contract price, conditioned upon the performance by the contractor of all Change Orders, undertakings, covenants, terms, conditions and agreements of the contract documents, and upon the prompt payment by the contractor to all persons supplying labor, equipment and materials in the prosecution of the work provided by the contract documents. Such bond shall be executed by the contractor and a corporate bonding company licensed to transact such business in the State of Colorado and listed in the most recent revision of "Surety Companies Acceptable on Federal Bonds" as published in the U.S. Treasury Department Circular No. 570. The expense of the bond shall be borne by the contractor. If at any time a surety on any such Bond is declared a bankrupt or loses its right to do business in the State of Colorado, or is disapproved by the owner, the contractor shall, within ten calendar days after notice from the owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the owner. The premiums on such bond shall be paid by the contractor. No further partial payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the owner.

2.27. PARTIAL COMPLETION AND OCCUPANCY

At any time during the performance of the work that a portion of the permanent construction has been satisfactorily completed, in accordance with the contract documents, which is not required for the operation of the contractor but is needed or required by the owner, the engineer shall issue to the contractor a written notice of partial completion, and thereupon or at any time thereafter, the owner may take over, occupy, operate and use that portion of the construction therein described.

The notification of partial completion shall in no way be construed to constitute an extension in contract time for the completion of all the work or as a waiver of the right of the owner to require the fulfillment of all the terms of the contract documents.

If such prior use should cause an increase in the cost of, or in the time required for, performance of the Work, as determined by the engineer, an equitable adjustment to the contractor shall be made and the contract documents modified by a Change Order.

2.28. MEASUREMENT OF QUANTITIES FOR PAYMENT

Measurement for pay items in the contract shall be as defined in the Measurement and Payment Section of the City of Rifle Standard Specifications for Design and Construction or as modified in the Special Conditions. The methods of measurement and computation to be used in determination of quantities; of work performed, of materials to be furnished and/or installed; will be those methods generally recognized as conforming to good engineering practice.

Sundry items, which are incident to or required in the construction of the work, but are not included as items in the Bid Schedule, shall be considered an integral part of the work to be performed. All labor, materials, etc., required for such items shall be furnished and installed, and the costs shall be included in the applicable contract unit price or lump sum amount bid.

2.29. SCOPE OF PAYMENT

Payment to the contractor will be made only for the actual quantities of contract items constructed and installed in accordance with the plans and specifications.

Payment made at the contract unit price or lump sum amount bid shall be full compensation for furnishing all labor, materials, equipment, appurtenances, taxes, insurance, permits and incidentals necessary to complete the work as shown on the plans and as required by the Specifications. Each item, fixture, piece of equipment, etc., shall be complete in place, operational and accepted.

No additional payment, over the amount bid, will be made for related work to any item unless specifically called for in the contract. Neither will payment be made for materials wasted, rejected or placed outside of plan limit lines.

2.30. PARTIAL PAYMENT AND CERTIFIED TAX REPORTS

The engineer, on or about the twenty-fifth day of the month in which work on the project is performed, shall prepare for contractor's approval, a partial payment estimate of the work performed and materials placed in accordance with the contract documents.

Not more than eighty (80) percent of the cost of materials and equipment delivered and suitably stored at or near the project site, but not incorporated in the work may be included in an estimate; provided however, the contractor furnishes invoices and supportive data establishing title in the name of the owner, to the engineer.

The amount to be retained from partial payments will be ten percent of the value of completed work, exclusive of mobilization and payment for materials on hand. When the retainment on contracts exceeding \$80,000 in value has reached five percent of the amount of the contract, no further retainment will be made. Amount of retainment will be held until such time as final payment is made with the following provision: When ninety-seven and one-half percent of the

work has been completed, the engineer may, at his discretion and The amount to be retained from partial payments will be ten percent of the value of completed work, exclusive of mobilization and payment for materials on hand. When fifty percent of the work required by contracts exceeding \$150,000. has been performed, no further retainment will be made if in the opinion of the City, satisfactory progress is being made on the work. Amount of retainment will be held until such time as final payment is made with the following provision: When ninety-seven and one-half percent of the work has been completed, the engineer may, at his discretion and with the consent of the Surety, reduce the retained amount to twice the value of the work remaining to be done. Any amount retained under this provision shall be subject to the requirements of Colorado Revised Statute § 24-91-103.

Earnings so retained on contracts exceeding \$150,000. in value may be withdrawn by the contractor provided the contractor provides the City with an irrevocable letter of credit in a form and from a financial institution acceptable to the owner. Any amounts so retained by the owner under this provision shall be subject to Colorado Revised Statute. § 24-91-105.

The contractor upon receipt of each partial payment estimate shall either indicate his approval by signing and returning a copy to the engineer, or return the estimate unsigned and indicate in writing his reason for refusing payment.

The owner, within fifteen- (15) days of presentation to the engineer of an approved partial payment estimate, shall pay the contractor the amount due thereon.

Upon receipt from the contractor of an approved designated semifinal estimate, as prepared by the engineer:

- A. The contractor shall, in writing, request the engineer to make a semifinal inspection in preparation for final acceptance of the work by the owner.
- B. The contractor shall prepare and furnish the engineer certified city and county sales and use tax reports covering the equipment and materials incorporated in the work.

The engineer, upon receipt of written request for semifinal inspection, shall promptly make said inspection of the work and issue to the contractor a written notice advising him of any deficiencies, corrective measures or clean up that he must complete prior to preparation of the final payment request.

All work covered by partial payment made shall thereupon become the sole property of the owner, but this provision shall not be construed as relieving the contractor of the sole responsibility for the care and protection of the work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the owner to require the fulfillment of all terms of the contract documents.

2.31.

FINAL PAYMENT REQUEST, ACCEPTANCE AND RELEASE

Upon completion of the work, cleanup of the project site, the engineer's receipt from the contractor in triplicate of certified tax receipts, the engineer, within ten calendar days thereafter shall:

- A. Prepare a final payment request, for contractor's approval, showing the total value of the work completed in accordance with the contract documents and as modified by any Change Orders, less the value of:

1. Partial payments previously made by the owner to the contractor.
2. Retention of any claims, on file with the owner, against the contractor
3. Estimated costs of completing any incomplete or unsatisfactory items of the work.
4. Payments advanced by the owner, to subcontractors, material and equipment suppliers or others which are known by the contractor to have been made but not previously accounted for.
5. Liquidated damages not previously paid to the owner by the contractor.

B. Advise the owner and contractor by written notice that:

1. The work has been inspected and accepted by him under the conditions of the contract documents.
2. The work, effective the date of the notice, is placed under warranty, at the contractor's expense, for a period of one year.
3. The entire balance shown on the final payment request, as prepared by the engineer, is due and payable within thirty calendar days from date of approval thereof by the contractor.

Upon approving the final payment request, as prepared by the engineer, the contractor by such act, indemnifies and saves the owner and his agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the work. The contractor shall, at the owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the contractor fails to do so, the owner may, after having notified the contractor, either pay unpaid bills or withhold from the contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the owner to either the contractor, his surety, or any third party. In paying any unpaid bills of the contractor, any payment so made by the owner shall be considered as a payment made under the contract documents by the owner to the contractor and the owner shall not be liable to the contractor for any such payments made in good faith.

The acceptance by the contractor of final payment shall be and shall operate as a release to the owner of all claims and all liability to the contractor other than claims in stated amounts as may be specifically excepted by the contractor for all things done or furnished in connection with this work and for every act and neglect of the owner and others relating to or arising out of this work. Any payment, however, final or otherwise, shall not release the contractor or his sureties from the warranty period or any other obligations under the contract documents or the Performance and Payment Bond.

In the event the owner fails to make final payment as herein provided, there shall be added daily interest at the rate of six percent per annum, commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor.

2.32.

INSURANCE

The contractor shall at its own expense keep in full force and effect during the term of this contract insurance as follows:

The contractor shall secure and maintain statutory workmen's compensation.

The contractor agrees to secure, at his own cost, a policy or policies of insurance sufficient to insure against the liability assumed by the contractor pursuant to the provisions of paragraph 2.36 of these General Conditions. The contractor's insurer must be rated "B+" or better, according to Best's Key Rating Guide and must be admitted to do business in the State of Colorado. The contractor shall provide the owner with a certificate of insurance from a properly qualified representative of the insurer, that any policy purchased pursuant to this contract complies with the conditions required by this contract. The certificate of insurance must show current name and address of the insured(s) named in the policy. The contractor shall not commence any work under this contract, and shall not allow any subcontractor or any officer, employee, or agent of the contractor or any subcontractor to commence any work under this contract, until any such certification has been received and approved by the owner.

The contractor shall not be relieved of any liability assumed pursuant to the foregoing paragraph by reason of its failure to secure insurance as required by this contract or by reason of its failure to secure insurance in sufficient amounts, of sufficient durations, or of sufficient types to cover such liability. The required policy shall meet the following conditions:

- A. The policy limits shall be as follows:
 - 1. The limit for an injury to one person in any single occurrence shall be no less than \$1,000,000, and the limit for an injury to two or more persons in any single occurrence shall be no less than \$2,000,000. Costs of defense shall not be included within such limits or, if they are so included, the minimum limits shall be \$1,000,000 combined single limits.
 - 2. The general aggregate limit shall be unlimited or at least \$2,000,000.
- B. The policy shall include the owner as an additional insured. The parties hereto understand and agree that the owner is relying on and does not waive or intend to waive by this contract, any provision hereof, including the provisions of this paragraph, the monetary limitations (presently \$1,000,000 per person and \$2,000,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended, or otherwise available to the owner.
- C. The insurer shall give the owner notification of any cancellation or termination by refusal to renew the policy or any change in coverage of the policy in the manner provided by law. If no such notification is provided by law, the insurer shall give the owner at least thirty (30) days prior written notification of any cancellation or termination by refusal to renew the policy or of any change in coverage of the policy, unless cancellation or termination is for non-payment of premium, in which case, the industry standard of ten (10) days prior written notification shall apply.
- D. The contractor shall be solely responsible for any deductible losses under the policy.
- E. If the policy 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 two years. The contractor agrees to purchase such an extended reporting period should the policy be cancelled or terminated.

- F. If the policy is a claims made policy, the policy shall give the owner the right to purchase the extended reporting period described in paragraph E above if the contractor fails to purchase such an extended reporting period as required by this contract. The owner's exercise of such right shall not relieve the contractor of any liability for its failure to purchase such an extended reporting period as required by this contract.
- G. If the policy is a claims made policy, the retroactive date of any renewal of such policy shall be no later than the date this contract is signed by the parties hereto.
- H. 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 the contract is signed by the parties hereto.

The contractor shall secure and maintain, at his own expense, if applicable or called for in the Special Conditions, the following insurance coverage:

Fire, extended coverage and vandalism insurance on the project to the full insurable value thereof for the benefit of the owner, the contractor and subcontractors.

"All Risk" type builder's risk insurance for work to be performed. Unless otherwise authorized by the owner, the amount shall not be less than the contract price totaled in the Bid Proposal. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the contract time and until the work is accepted by the owner. The policy shall name as the insured the contractor, the owner and their designated agents.

Special Comprehensive General Bodily Injury and Property Damage for the period of time that work being performed is encroaching on property owned or controlled by individuals, partnerships or corporations such as irrigation companies and railroads, state or federal agencies, and to limits set forth in their permit. The policy shall be issued to the permittee and name as the insured the contractor, the owner and their designated agents.

The contractor must comply with the owner's requirements for filing certificates of insurance, as determined by the Risk Management Division. A certificate of insurance acceptable to the Risk Management Division must be provided at the time the contract is executed by the parties hereto unless both parties arrange otherwise. The contractor is responsible for submitting certificate(s) of insurance, subject to the insurance requirements described above, for all subcontractors. All certificates of insurance are subject to periodic verification and approval by the owner.

2.33. SEPARATE CONTRACTS

The owner reserves the right to let other contracts in connection with this project, or contiguous thereto. The contractor shall afford other contractors, utility companies or owner's forces reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. If the proper execution or results of any part of the contractor's work depends upon the work of any

other contractor, the contractor shall inspect and promptly report to the engineer any defects in such work that render it unsuitable for such proper execution and results.

If the performance of additional work by other contractors, utility companies or the owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the contractor by the engineer, prior to starting any such additional work. If the contractor believes that the performance of such additional work by the owner or others entitles him to a change in contract price or time, or both, he may, by written notice to the engineer, request a Change Order as provided under Changes in the Work.

2.34. HOUSEKEEPING AND CLEANUP

At all times during the progress of the work the contractor, at his expense, shall maintain the site, storage yard, adjacent properties, both public and private, policed and free of litter or trash. All material and equipment to be incorporated in the work shall be stored in a neat appearing manner and protected from damage or the elements until accepted in accordance with the contract documents.

Prior to final payment, the contractor, at his expense, shall remove from the project site and from contiguous private and public property, all temporary structures, equipment, rubbish and waste materials resulting from his operations. He shall clean up, police around and over all facilities that the owner will acquire maintenance thereof.

Disposal areas for waste material, from the contractor's operation, shall be those areas that comply in every way with local ordinances and are approved by the engineer.

2.35. ASSIGNMENT

Neither the contractor nor the owner shall sell, transfer, sublet as a whole, or otherwise dispose of the contract or any portion thereof without the written consent of the other and its surety; nor shall the contractor assign any monies due or to become due to him thereunder, except to a bank or financial institution acceptable to the owner.

2.36. INDEMNIFICATION

The contractor agrees to indemnify and hold harmless the owner, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims and demands on account of personal injuries, including without limitation worker compensation claims and death claims, or property loss or damage, or any other loss of any kind whatsoever, which arises out of or are in any manner connected with this contract, whether or not such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, negligence or other fault of the contractor, any employees of the contractor, or any other person or entity; or by accident; or by any other cause. Nothing herein is intended to constitute a covenant, promise, or agreement to indemnify and hold harmless the owner from any liability or damages directly caused by or attributable to the owner's own negligence. The contractor agrees to investigate, handle, respond to, provide defense for, and defend against, any liability, claims, or demands arising from, connected with, or related to the contract at the sole expense of the contractor regardless of whether the liability, claim, or demand is related to the owner's own negligence and the contractor further agrees to bear all other costs and expenses, related thereto, including court costs and attorney fees, whether or not the claim or claims alleged are groundless, false, or fraudulent. Nothing herein is intended to be, or may be construed as, a waiver or the immunities, protections, or limitations on damages provided

to The City of Rifle by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 through 24-10-120, as it may from time to time be amended.

2.37. ENGINEER'S STATUS AND DECISIONS

The engineer shall act as the owner's representative during the construction period. He shall decide questions which arise in the execution of the work. He shall perform technical inspections in the field, in laboratories, at factories, at sources of supply and wherever he feels the necessity to determine the quality and acceptability of material and equipment furnished and work performed. He shall reject all material, equipment and work which fails to conform to the specifications. He shall stop the performance of the work whenever such stoppage may be necessary to insure the proper execution of the contract documents. He shall determine the quantity of work to be paid for and prepare all partial payments, estimates and the final payment request for submittal to the owner after obtaining the contractor's approval thereof.

The engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

The engineer shall, within a reasonable time after presentation, make decisions by written notice on all claims of the owner or the contractor on all matters relating to the execution and progress of the work or the interpretation of the contract documents.

2.38. LAND, RIGHTS-OF-WAY, EASEMENTS AND ENCROACHMENTS

Prior to issuance of Notice to Proceed, the owner shall obtain all land and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the contract documents, unless otherwise stated in the Special Conditions or mutually agreed to.

The owner shall indicate on the drawings or provide to the contractor information which delineates and describes the lands owned, rights-of-way and easements acquired, and encroachments over lands upon which the work is to be performed.

Delays in furnishing land for the work by the owner may be deemed proper cause for a change in the contract price, contract time, or both.

The contractor shall provide, at his own expense and without liability to the owner, any additional land and access thereto that the contractor may desire for temporary construction facilities, or for storage of materials and equipment.

2.39. GUARANTY AND WARRANTY

The contractor shall guarantee all material and equipment incorporated in, and warrant all workmanship on, the project for a period of one year from the date of written notice of acceptance of the project or portions thereof. The contractor shall within forty-eight hours after notification from the owner, subsequently verified by written notice, make all needed repairs and corrections which develop or result from defective workmanship, materials or equipment.

In the event the contractor should fail to make such repairs, adjustments, or performs other necessary work required to correct any deficiencies, the owner may do so and charge the contractor the cost thereby incurred. The Performance and Payment Bond shall remain in full force and effect through the guarantee and warranty period.

2.40. TAXES

The contractor will pay all applicable sales, use and other similar taxes required by the laws of the State of Colorado. When taxes are due, the developers, other responsible parties, and/or their subcontractors, prior to requesting final warranty on their project shall furnish the engineer, in triplicate on the City form, certified receipts of sales, use and other similar taxes, required by law, paid on all materials and equipment incorporated in or used in the performance of the work.

Notwithstanding the above, the contractor shall obtain from the Colorado Department of Revenue a Certification of Exemption indicating, where applicable, that the contractor's purchase of construction or building materials is for use in the building, erection, alteration or repair of public works owned and used by the City of Rifle, in its governmental capacity. The contractor shall file with the engineer a certified copy of the Certification of Exemption, prior to commencing Work.

Where a project is exempt from such tax, the amount of such tax shall not be included in any bid proposal submitted to the City.

2.41. DESIGNING AND PERFORMING WORK WITHOUT A CONTRACT AGREEMENT

All property owners, individuals, partnerships or corporations which engage in the subdividing or improving of land, or in the design or construction of the Work, ultimately to be maintained, operated, occupied or owned by the City of Rifle, other than those directly contracting with the City, shall adhere to this Public Works Manual, Design and Construction of Public Improvements to which these General Conditions are a part.

No portion of the work shall be performed until the engineer has approved the drawings pertaining there to, and then only by a contractor that is licensed and bonded to the City of Rifle.

Those who are responsible for, or cause the work to be performed, and those who actually perform the work, will be considered, for purposes of these General Conditions and Standard Specifications, as having executed a contract agreement, as contractor, with the City of Rifle as owner, even though no agreement exists. As such, they shall comply with all the technical and performance provisions of these Specifications, be subject to inspection and the directives of the engineer.

2.42.

CLOSEOUT

To close out a project or development, several items need to be taken into account by the Contractor, Engineer and by the Owner. Several of these items may have been initiated prior to or during the work.

The Contractor of the work shall notify the Engineer and the Owner in writing that he has reached "Substantial Completion" and include a list of work yet to be completed or corrected. If requested by the Engineer, closeout of areas or portions of work may be allowed by the Owner.

The Engineer, along with the Owner's representative, shall inspect the work to determine if it is substantially complete. If it is substantially complete, a "Certificate of Substantial Completion" will be issued by the Engineer along with a "Punch List" of items to be completed or corrected, to the Contractor and the Owner.

The Contractor shall complete and/or correct the items listed on the punch list, or any other item that becomes known, and again notifies the Engineer and Owner in writing that the work is ready for final inspection. At this time, the Contractor may submit his application for final payment to the Engineer.

The Engineer along with the Owner's representative will make a final inspection. If the work is found acceptable and complete to the satisfaction of the Owner, a meeting will be scheduled to finalize all other items due. Should the Contractor fail to complete and/or correct all punch list items required by the Owner, the Contractor shall pay for additional "Final Inspections" by the Engineer at the Engineer's current rates. If the Contractor has any question with regard to any items found on the punch list, he shall request clarification from the Engineer prior to final inspection.

Prior to release of final payment, a meeting (referred to in the previous paragraph) shall be held to collect from the Contractor and/or the Engineer, for the Owner, the following items:

1. Outside Inspection Certificates, as applicable,
2. Materials Certificates of Compliance,
3. Equipment and Material guarantees,
4. Contractors one-year (or longer, if required) guarantee or warranty using Owner forms,
5. Operation & Maintenance Manuals and Parts list, as applicable,
6. Receipts for Materials delivered to the Owner,
7. Miscellaneous Keys, Tools, etc.
8. Final Application for Payment,
9. Consent of Surety to Final Payment,
10. Contractor's Affidavit of Release of Liens,
11. Project Record Drawings (As-Builts),
12. Quitclaim deed from developer conveying any interest it has in the public improvements to the Owner using Owner format,
13. Bill of Sale conveying all public improvements to the Owner free and clear of liens and encumbrances using Owner format,

14. Final Payment Amount,
15. Contractor acknowledgement of Date of Warranty, and
16. All other documentation.

And the Owner will provide to the Engineer:

1. Public Works Director Certification that the work has been constructed in conformance with the plans and specifications.
2. A letter informing the financier to release the Letter of Credit.

Inspection certificates shall be submitted (Number 1, in the list above) from any State or Other governing body having jurisdiction, such as State electrical certification that the work is in strict conformance with applicable codes.

The Contractor shall remedy any defects due to faulty materials or workmanship and pay for damage to other work resulting there from, for a period of one year (or longer, if required) in accordance with Section 2.39 herein. A written warranty based on the provisions of Section 2.39 shall be provided to the Owner, dated as agreed with the Owner, properly signed and notarized and addressed to the Owner.

All keys to doors, panels or switches, special tools required for equipment and spare parts or supplies, as applicable, shall be accounted for and turned over to the Owner.

The Owner, will initiate action to advertise in the local newspaper regarding final payment to the Contractor and determining the date for payment.

Project Record Drawings (As-Builts) shall consist of one blackline copy of the completed project work with changes clearly marked and clouded and a CD-ROM. The CD-ROM disk shall include the marked up sheets in individual PDF format files and the electronic line work in the latest AutoCad drawing format. The electronic line work should be supplied such that all improvements are located on the Rifle grid i.e. UTM Z13 in metric (meter) scale. All drawings (electronic and hardcopy) should be clearly and neatly marked "RECORD DRAWING" in 1/2" block letters in the lower right quadrant of the sheet.

Item 14, above, shall be broken down into 1) cost of water system per individual street (including pipe, fittings, valves, services, hydrants, etc.), 2) sewer system (including pipe, services, manholes, etc.) per individual street, 3) storm drain and culvert system per individual street (including pipe, inlets, boxes, flared ends, manholes, etc.) and 4) individual street costs (including signals, signs, striping, asphalt, road base, curb, gutter sidewalk, grading, etc.).

2.43. RIGHTS AND REMEDIES

The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not as a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, including but not limited to tort remedies. The Contractor agrees that the economic loss rule as set forth in the Town of Alma v. Azco Construction, Inc., 10 p.3d 1256 (Colo. 2000) shall not serve as a limitation on the Owner's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Contractor further specifically

waives all provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Contract. In the event any portion of this provision is deemed un-enforceable by a court of competent jurisdiction, the remaining portions of this provision shall survive.