GENERAL CONDITIONS OF THE CONTRACT

DEFINITIONS

A. Contract Documents. The Contract Documents consist of:

(a) Agreement and Bid Schedule;
(b) Performance and Payment Bonds;
(c) Liability, Automobile and Workmen's Compensation Certificates of Insurance;
(e) Notice to Proceed;
(f) General Conditions of the Contract;
(g) Detailed Special Conditions, including all amendments issued prior to the opening of the bids and including any applicable Standard Work Specifications;
(h) Maps and drawings, including all amendments issued prior to the opening of the bids;
(i) Final inspection and certificate of completion;
(j) Notice of CONTRACTORS Settlement, and
(k) List of Equipment Offered.

B. Procedural Documents. The Procedural Documents consist of:

(a) Advertisement for Bids;
(b) Bid form;
(c) Bid Bond;
(d) Notice of Award;
(e) MBE/WBE Forms; and
(f) AML Contractor Ownership and Control Information Package (AVS);
(g) Three-Way Agreement for Reclamation Activities, if required.

C. Correlation and Intent of the Documents

The Contract Documents are complementary; what is called for by any one document shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

In case of a difference between the contract documents, precedence shall be given in the following respective order: Agreement, Special Conditions, Bid Schedule, Standard Work Specifications, Maps, Drawings, and General Conditions. Amendments shall take precedence in the area of the bid document which they modify or clarify. In the case of any such difference, the matter shall be promptly brought to the attention of the Principal Representative who will make a determination in writing.

D. Words and Terms Used

AGREEMENT - The word Agreement means the written Agreement entered into by the State of Colorado acting by and through the Principal Representative and the CONTRACTOR for the performance of the work and payment for the work.

COLORADO LABOR - The term Colorado Labor shall be defined as provided in Title 8-17-101, et seq. CRS 1973, as amended.

CONTRACTOR - The term CONTRACTOR means the sole proprietorship, partnership, or corporation entering into a Contract with the State of Colorado.
DRAWINGS - The word Drawings shall mean all drawings in the Special Conditions.

PRINCIPAL REPRESENTATIVE OR STATE - The term Principal Representative means the Director of the State of Colorado, Division of Reclamation, Mining and Safety (DRMS) or his designee. The Colorado Division of Reclamation, Mining and Safety is located at 1313 Sherman Street, Room 215, Denver, Colorado, 80203, telephone (303) 866-3567.

PROJECT MANAGER - The term Project Manager means the Division of Reclamation, Mining and Safety employee or representative responsible for day to day observation of work at the project site, and general contract administration for the DRMS.

SUBCONTRACTOR - A Subcontractor is a sole proprietorship, partnership or corporation which has a contract with the CONTRACTOR for the performance of labor at the site of the work regardless of whether supplying of material is part of such contract, but without contractual relationship to the Principal Representative.

WORK - The word Work means material and/or labor.

PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish a labor and material payment bond for 100 percent of the original contract price and a performance bond for 100 percent of the original amount of the contract. The bonds are required by State Law, Title 24-105, 202-203, C.R.S. as amended. The bonds shall be submitted using the State forms. A certified or cashiers check or bank money order may be accepted in lieu of the bonds. If a surety other than a bond is used, the State will hold fifty percent (50%) of the surety until the final settlement date and fifty percent (50%) for six (6) months after the final settlement date.

Article 3. INSURANCE

A. The contractor shall obtain at his own expense, and maintain at all times during the term of this contract, insurance listed below. Proof of insurance must be submitted on certificates showing the following minimum coverage:

1) Worker’s Compensation Insurance as required by state statute, and Employer’s Liability Insurance covering all of contractor’s employees acting within the course and scope of their employment.

2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

   a. $1,000,000 each occurrence;
   b. $1,000,000 general aggregate;
   c. $1,000.00 products and completed operations aggregate; and
   d. $50,000.00 any one fire.

   If any aggregate limit is reduced below $1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

3) Automobile Liability Insurance covering any auto (including owned, hire and non-owned autos) with a minimum limit as follows: $1,000,000 each accident combined...
The Certificates of Insurance and insurance policies required above shall be subject to the following stipulations:

B. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037 or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

F. The contractor shall provide certificates showing insurance coverage required by this contract to the State within ten days of the notice of award. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

Bidders are advised to consult with their insurance carrier concerning these requirements. Submit a bid only if you are prepared to complete these requirements.

Article 4. THREE-WAY AGREEMENT

If a three-way Agreement for Reclamation Activities) is required, the CONTRACTOR shall enter into a three-way agreement between the CONTRACTOR, the State of Colorado and the private landowner, and maintain for the duration of the work, in addition to that specified above, additional insurance coverage of:

a. Comprehensive General Liability Insurance, which includes operations & premises coverage, products/completed operation coverage, all on an occurrence basis, all with combined single limit of liability of $1,000,000;

b. Statutory Worker’s Compensation and Occupational Disease Disability Insurance;

c. Employers’ Liability Insurance with limits of $500,000 each occurrence; and

d. Automobile Insurance with a combined single limit of liability of $1,000,000, and furnish evidence of the insurance coverage as prescribed the three-way agreement.

If a three-way Agreement for Reclamation Activities is required, the CONTRACTOR will be required to furnish lien waivers to the private landowner. See Number 5 of the sample three-way Agreement for Reclamation Activities. The landowner’s address will be furnished to the CONTRACTOR with the Notice to Proceed.
Article 5. PROJECT SCHEDULE

The successful bidder shall, prior to the execution of an Agreement, furnish a plan for construction of the work showing (1) the date(s) he expects to move various pieces of equipment onto the work site, and (2) the dates and period(s) he proposes to perform each phase of the project work.

Article 6. APPLICANT VIOLATOR SYSTEM

The successful bidder will be required to submit a completed AML Contractor Ownership and Control Form and pass a check of the Applicant Violator System (AVS).

Although there are many circumstances under which a bidder might be found "not responsible", any CONTRACTOR who has had direct or indirect association with a firm that has had a permit revoked or a bond forfeited by the Division of Reclamation, Mining and Safety or the Mined Land Reclamation Board will be considered not responsible, and not eligible to be awarded any bid. Any firm listed in the federal Office of Surface Mining’s Applicant Violator System or who is not confirmed by the Office of Surface Mining will be considered not responsible.

Article 7. MINORITY/WOMEN BUSINESS PARTICIPATION

The successful bidder is required to complete and return the Minority/Women Business Enterprise Participation Report Form before an Agreement will be executed.

Article 8. NOTICE TO PROCEED

After the Agreement has been fully-executed, the Principal Representative will issue the Notice to Proceed consistent with the project dates in the Special Conditions. Under no circumstance shall the CONTRACTOR begin work before a Notice to Proceed is issued.

Article 9. ACCIDENT PREVENTION AND SAFETY MEASURES

The CONTRACTOR shall comply with applicable provisions of OSHA Part 1926, Construction Standards and Interpretations, in effect on the date of Bid Opening. The CONTRACTOR shall continuously maintain, at his expense, adequate protection of the work and the Principal Representative’s property, and shall take all practicable precautions in the interest of safety, including: Safety Glasses (when flying debris may be encountered), steel toe boots and hard hats (except when inside operator’s cab or inside vehicle cab) are required to be worn at all times. At least two 10 pound A B C rated Dry Chemical type-portable fire extinguishers shall be on site at all times. A First Aid Station meeting MSHA requirements (CFR 75.1713-7, or 77.1707) must be kept in a sanitary condition and must be kept on site during all work operations. An emergency accident and medical evacuation/transportation plan shall be established and posted for the site.

If required by the PROJECT MANAGER, the CONTRACTOR shall prepare a Safety, Health, and Environmental Action Plan (SHEAP) for the project operations prior to beginning work.

If a SHEAP is required, the CONTRACTOR will comply with the following at a minimum:

- TRAINING REQUIREMENTS: Prior to working on the site, site-specific hazard training as covered in the SHEAP will be administered to ALL persons working on the project site (both surface and underground), by the CONTRACTOR AND DRMS PROJECT MANAGER, and will be acknowledged on a form attached to the SHEAP to document this training.

- PROACTIVE SAFETY: The CONTRACTOR shall designate one person to be responsible for safety and health at the work site. The CONTRACTOR will conduct daily pre-work
safety talks with all employees. The CONTRACTOR shall conduct daily work area safety inspections and document the results of these inspections.

Any shafts which were fenced prior to construction activities shall be protected by a temporary fence during non-working hours. Without relieving the CONTRACTOR of its legal or contractual duties to take safety precautions, other openings may be designated by the Principal Representative as requiring fencing due to proximity of houses or visitation by tourists.

Work may involve activities around unprotected hazardous mine shafts, stopes, adits and other openings which may be open to the surface or hidden from view by trash, debris, vegetation, or thin and unstable layers of surficial materials or rock. The CONTRACTOR shall be responsible for thoroughly investigating the site conditions and scheduling and directing his equipment, equipment operations, personnel and safety procedures to prevent accidents and injuries. Failure to comply will be cause for immediate suspension of the work.

All Chemicals, equipment and materials proposed and/or used in the performance of this Contract must conform to the standards required by the William-Stieger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery to the job site.

Projects involving work in or around radiological hazards will require special measures to be followed during the project.

Article 10. PLANS AND WORKING DRAWINGS

The drawings if any, included with the Contract Documents are complete and adequate for construction. While every effort has been made to have the plans and drawings free of errors and ambiguities, any such errors or ambiguities must be brought to the Principal Representative’s attention immediately.

Article 11. JOB PROGRESS REPORTS

The CONTRACTOR will be required to properly complete weekly or daily progress reports, forms for which will be provided by the Principal Representative. Completed reports must be submitted to the Principal Representative prior to or at the time of requests for payment. Payment requests will not be processed until progress reports corresponding to the payment period are received.

Article 12. CORRESPONDENCE FROM THE CONTRACTOR

All correspondence from the CONTRACTOR to the Principal Representative shall be submitted to the PROJECT MANAGER with a copy to:

Colorado Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203
(303) 866-3567
Fax (303) 832-8106

Article 13. MATERIALS

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.
Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good and uniform quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

**Article 14. PREFERENCE OF BIDDERS AND MATERIALS**

The selection of materials and equipment for the work shall be in accordance with the laws of Colorado and the Buy American Act (41 U.S.C. 10) as follows:

A resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. (Title 8-19-101 to 102, CRS, as amended).

The Buy American Act provides that the Government give preference to domestic construction material. The CONTRACTOR agrees that only domestic construction material will be used by the CONTRACTOR, subs, material men and suppliers in the performance of this agreement, except for foreign construction material, if any, listed in this agreement.

Components, used in this clause, means those articles, materials, and supplies incorporated directly into construction materials. Construction material, as used in this clause, means an article, material or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as fire alarm systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or component of such systems are delivered to the construction site. Domestic construction material, as used in this clause means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined by the Principal Representative or designee not to be mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, shall be treated as domestic.

**Article 15. LABOR AND WAGES**

Title 8-17-101, C.R.S., as amended applies to this contract and states that eighty percent of the laborers employed on each project must be Colorado labor. "Colorado labor" means any person who is a resident of the State of Colorado at the time of employment, without discrimination as to race, color, creed, sex, age or religion."

The Davis Bacon Act Does/Does Not Apply. The rate of wages to be paid for all laborers and mechanics shall be in accordance with the laws of Colorado. The CONTRACTOR shall at all times enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

**Article 16. PROJECT MANAGER'S DECISIONS**

The PROJECT MANAGER shall make decisions on all matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

The PROEJCT MANAGER is, in the first instance, the judge of the performance of the Contract as it relates to compliance with drawings and specifications, quality of workmanship and material.
Article 17. WORK ACCESS AND INSPECTION

The Principal Representative shall at all times have access to the work. The CONTRACTOR shall provide proper facilities for such access and for their inspection of the work. If any work should be covered up without approval or consent of the Principal Representative, it must if required, be uncovered for examination at the CONTRACTOR’S expense.

If the Special Conditions, the Principal Representative’s instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONTRACTOR shall give the Principal Representative timely notice of its readiness for observation by the Principal Representative or inspection by another authority. If the inspection is by another authority, the CONTRACTOR shall give the Principal Representative timely notice of the date of inspection and copies of certificates of inspection being secured by the CONTRACTOR.

Article 18. PRIME CONTRACTOR

If several CONTRACTORS propose to join together to perform the work, the Principal Representative will recognize only one bonded prime CONTRACTOR, who will enter into a contract with the Principal Representative, and who will subcontract the work to such others as are required to perform the work, unless a "joint venture" arrangement between CONTRACTORS satisfactory to the Principal Representative has been executed. In this case, the "joint venture" shall be bonded in accordance with these General Conditions and shall designate a Superintendent with whom the Principal Representative can communicate and who will supervise the work and be fully responsible for the performance of the work.

Article 19. SUPERINTENDENCE OF THE WORK

The CONTRACTOR shall keep a competent and reliable superintendent on the job at all times that labor is being performed. The superintendent, in the CONTRACTOR’S absence from the site, shall stand in the stead of the CONTRACTOR and any authoritative directions given to the superintendent shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all Drawings, Specifications and other instructions and shall at once report to the Principal Representative any error, inconsistency or omission which he may discover, but he shall not be liable to the Principal Representative for any damage resulting from any errors or deficiencies in the Contract Documents or other instructions by the Principal Representative.

The CONTRACTOR shall see that the work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The CONTRACTOR shall establish all lines, levels, grades, and marks necessary to facilitate the operations of all concerned in such CONTRACTOR’S work. He shall lay out the work in a manner satisfactory to the Principal Representative.

Article 20. SUBCONTRACTORS

The CONTRACTOR shall submit to the Principal Representative, a complete list of subcontractors for the project, including the name of the proposed subcontractor and a description of the work to be subcontracted. The CONTRACTOR shall not, without prior written approval of the Principal Representative, enter into any subcontract covering any part of the work covered by this contract.

If at any time the Principal Representative determines that any subcontractor is incompetent or undesirable, he shall notify the CONTRACTOR accordingly in writing and the CONTRACTOR shall take immediate steps for cancellation of the subcontract.
Article 21. RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

The CONTRACTOR agrees to bind each subcontractor to the terms of these General Conditions and to the requirements of the drawings and specifications, and any amendments or change orders, and also all the other Contract Documents, so far as applicable to the work of such subcontractor, unless specially noted to the contrary.

Nothing contained in the contract shall create any contractual relationship between any subcontractor and the Principal Representative. Approval by the Principal Representative to any subcontract or any provisions thereof shall not be construed to be a determination of the acceptability of any subcontract price, or of any amount paid under subcontract or to relieve the CONTRACTOR of any responsibility for performing all work covered by this contract.

The CONTRACTOR shall be fully responsible to the Principal Representative for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work being done by subcontractors shall be given to the CONTRACTOR.

Subcontracting by subcontractors shall be subject to the above requirements.

Article 22. WORK BY OTHERS

The Principal Representative reserves the right to let other contracts in connection with this work.

The work site is located in a mining area and mining or other construction activities may be occurring at the same time as the work proposed under this contract. It shall be the CONTRACTOR’S responsibility to coordinate his work with those of the landowners, mining companies or other contractors on the site. The CONTRACTOR shall allow other contractors or mining company’s 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.

The CONTRACTOR shall, without charge, permit the landowner, mining companies, and such other contractors to use the roads and other facilities constructed or improved by the CONTRACTOR for the contract work; provided that such usage shall in no way interfere with the contract work of the CONTRACTOR. If any part of the CONTRACTOR’S work depends, for proper execution or results, upon the work of any other contractor, the CONTRACTOR shall inspect and measure work already in place. The CONTRACTOR shall promptly report to the Principal Representative any defects in such work that render it unsuitable for proper execution and results, or any discrepancy between the executed work and the Special Conditions or Drawings. Failure of the CONTRACTOR to so inspect and report shall constitute an acceptance of the other CONTRACTOR’S work as fit and proper for the reception of his work, except as to defects which may develop in the other CONTRACTOR’S work after the execution of the CONTRACTOR’S work.

Article 23. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the CONTRACTOR cause damage to any separate CONTRACTOR on the work, the CONTRACTOR agrees, upon due notice, to settle with such CONTRACTOR by agreement if he concurs. If such separate CONTRACTOR sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the CONTRACTOR, who shall defend such proceedings. If any judgment against the Principal Representative arises therefore, the CONTRACTOR shall pay or satisfy it and pay all costs incurred by the Principal Representative.
Article 24. ACCESS AND WORKING AREA

Access to the sites or to the vicinity of sites is by public roads and private roads as shown on the drawings or as may be located in the field. Some sites may not have adequate access roads for CONTRACTOR’S methods or equipment and construction or improvement of existing roads may be required. Access roads used or constructed by the CONTRACTOR shall be maintained during use and the land reclaimed or restored to pre-existing or better conditions.

The CONTRACTOR shall keep access roads, equipment, the storage of materials and the operation of his workmen to the immediate vicinity of the work sites and shall not unreasonably encumber the premises with his materials and equipment. Caution shall be exercised at all times to avoid blocking roads or in any other way interfering with operations by others or presenting a hazard to personnel, equipment, or to the public.

The CONTRACTOR shall obtain all permits and/or permission required to use public and private roads. The CONTRACTOR shall obey all laws and regulations affecting the use of public thoroughfares.

The CONTRACTOR shall provide such temporary barricades, fences, or warning signs as may be necessary to make temporary or permanent roads safe by night as well as by day. He shall at all times have a sufficient number of watchmen, flagmen, and warning lights to protect traffic where it is interfered with by his operations, where his trucks enter or leave public roads, or where work is being done adjacent to such roads.

Article 25. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all his work and materials protect the property from injury or loss arising in connection with the Contract and adequately protect adjacent property as provided by law and the Contract Documents.

The CONTRACTOR shall make good any damage, injury or loss, except such as may be:

(a) Directly due to errors in the Contract Documents;
(b) Caused by agents or employees of the Principal Representative;
(c) Due to causes beyond the CONTRACTOR’S control and not to his fault or negligence.

The CONTRACTOR shall take all necessary precautions for the safety of employees on the work site, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction.

The CONTRACTOR shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary to assure the safe passage of pedestrians and automobiles.

In an emergency affecting the safety of life or posing a threat to adjoining property, the CONTRACTOR, without special instruction or authorization from the PROJECT MANAGER or Principal Representative, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; and he shall so act, without appeal, if so authorized or instructed. The Principal Representative must be notified as soon as possible in the event of any emergency. Any
compensation, claimed by the CONTRACTOR on account of emergency work, shall be determined by agreement for extra compensation.

**Article 26. HISTORICAL PRESERVATION**

Areas adjacent to the mine sites often contain related artifacts and structures, such as buildings, tipples, ore houses, headframes and foundations that may be historically significant. Care shall be exercised to avoid any effect to these structures and artifacts, in order to preserve their integrity. Existing structures, except shaft timbering, shall not be used as load-bearing devices.

**Article 27. ELECTRICAL POWER, POTABLE AND CONSTRUCTION WATER**

The CONTRACTOR shall be responsible for providing electrical power and potable and construction water as needed to perform the contract work. If the CONTRACTOR desires to use power other than portable generators, the CONTRACTOR plans for providing such power will be subject to the Principal Representative's prior approval. The cost for providing power and water will not be paid for separately but shall be included in the bid prices of the various work items. The CONTRACTOR shall install and maintain all utilities in such manner as to protect the public and workmen and conform to any applicable laws and regulations. Upon completion of the work he shall remove all such temporary utilities from the site.

**Article 28. PROTECTION OF EXISTING UTILITIES**

Utilities, both underground and aboveground, may exist which could affect construction work covered under this contract. The CONTRACTOR is responsible for determining the nature and locations of any and all utilities which could affect construction work covered under this contract. The horizontal and vertical locations of utilities may vary. The CONTRACTOR is responsible for excavation and equipment movement without damage to utilities. The CONTRACTOR assumes all responsibility for damages to any utilities he causes under this contract.

When construction crosses highways, railroads, streets or utilities under the jurisdiction of State, County, City or other Public agency, Public Utility or private entity, the CONTRACTOR shall secure proper written permission before executing such construction. The CONTRACTOR will be required to furnish a proper release before final acceptance of the work.

**Article 29. PERMITS, LICENSES AND REGULATIONS**

Permits and licenses at a Federal, State, County and/or local level, required for prosecution of the work shall be procured and paid for by the CONTRACTOR.

**Article 30. TAXES**

State of Colorado as purchaser is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K) and from all State and Local Government Use Taxes (Ref. Colorado Revised Statutes Chapter 39-26.114(a)). (Our Colorado State and Local Sales Tax Exemption Number is 98-022381). The Contractor is hereby notified that when materials are purchased in certain political subdivisions (for example- the City of Denver), the Contractor may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.
Article 31. ROYALTIES AND PATENTS

The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado harmless from loss on account thereof.

Article 32. PROJECT PUBLICITY

The Principal Representative will be sole provider of information about the project work to area residents and special districts, county, state, and federal agencies, and individuals from the media. Any contact with these groups by the CONTRACTOR must be cleared through the Principal Representative.

Article 33. TIME OF COMPLETION

It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress and the time for completion of the work to be done hereunder are Essential Conditions of the Contract; and it is further understood and agreed that the work embraced in this Contract shall be commenced in the time to be specified in the Notice to Proceed.

It is further agreed that time is of the essence of each and every portion of the Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall also be of the essence of the Contract.

The CONTRACTOR agrees that work will be performed with due diligence in accordance with accepted engineering and construction practices to the end that the entire contract work shall be completed within the time specified in the Special Conditions after receipt of the Notice to Proceed. It is expressly understood and agreed, by and between the parties, that the stipulated performance time for completion of the work described is a reasonable time for completion of the work, taking into consideration all factors, including average climatic conditions and usual construction practices prevailing in the area.

Article 34. TEMPORARY SUSPENSION OF WORK

If the CONTRACTOR is responsible for a delay in progress of the work, the CONTRACTOR shall, without additional cost, work overtime and use such additional equipment and manpower as may be necessary to complete the contract work by the stipulated date. Failure to comply will be grounds for termination of this Agreement as stipulated below or assessment of liquidated damages as stipulated under TEMPORARY SUSPENSION OF WORK.

The State, acting by and through the Principal Representative, shall have the authority to suspend the work, either wholly or in part, for such period or periods as he or they may deem necessary due to:

(a) Unsuitable weather;
(b) Faulty workmanship;
(c) Improper superintendence
(d) CONTRACTOR failure to carry out orders or to perform any provision of the Contract Documents;
(e) Conditions which may be considered unfavorable for the prosecution of the work.

Additional time will be added to the performance time for the contract for (a) above only.
If it should become necessary to stop work for an indefinite period, the CONTRACTOR shall store all materials in such manner that they will not become an obstruction or become damaged in any way; and he shall take every precaution to prevent damage to or deterioration of the work, provide suitable drainage and erect temporary structures where necessary.

Such Suspend Work Order shall be in writing and the CONTRACTOR shall again proceed with the work when so notified in writing.

**Article 35. ESTIMATED QUANTITIES**

The CONTRACTOR understands and agrees that:

(a) The quantities and measurements set forth in the Special Conditions are in no case exact and in some instances the exact quantities and measurements are impossible to determine until after conditions have become known during construction;

(b) The quantities shown in the Special Conditions are for use as a basis for comparing bids only;

(c) The Principal Representative does not expressly, or by implication, agree that the actual amount of work performed or material furnished or installed will correspond therewith;

(d) During the progress of the work the Principal Representative may find it advisable and shall have the right to make changes in locations of portions of the work, to omit portions of the work and to increase or decrease the quantities, as may be deemed necessary or desirable;

(e) Under no circumstances or conditions will the CONTRACTOR be paid anything on account of anticipated profits upon the work or any portion thereof covered by the Contract which is not actually performed;

(f) Under no circumstances or conditions will the CONTRACTOR be paid more than the unit price bid for any item of the Bid because the actual quantity is greater or less than the quantity shown in the Bid or Bid Schedule, and

(g) Measurements of any openings have been made in sufficient detail to establish general shapes and dimensions. The locations and dimensions of vertical and horizontal openings and depths of materials shown on the documents as waste material, soil and unconsolidated material and rock material are approximate measurements only and shall be verified by excavation.

**Article 36. DIFFERING SITE CONDITIONS**

(a) The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the Principal Representative of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or

(2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Principal Representative shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the
CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly. No claim of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the State.

Article 37.  CHANGES IN THE WORK

The Principal Representative, without invalidating the Contract, may order extra work, or make any other reasonably related changes by altering, adding to or deducting from the work; the contract price and time for completion of the work will be adjusted accordingly by written change order.

All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused by changes authorized in the change order shall be included in the written change order.

The Principal Representative shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by a change order. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract, approved by the Principal Representative. No claim for any change to the Contract sum shall be valid unless so ordered.

The value of any extra work or change shall be determined in one or more the following ways:

(a) By estimate and acceptance in a lump sum;
(b) By unit prices named in the Contract;
(c) By actual cost plus a fixed fee, or percentage, the latter agreed upon prior to starting the extra or changed work.

Changed work shall be adjusted and considered separately for the work either added or omitted. The amount of adjustment for work omitted shall be estimated at the time it is authorized, and the agreed adjustment will be deducted from the subsequent monthly progress payments.

Article 38.  CLAIMS FOR EXTRA COST

If the CONTRACTOR claims that any instructions, by drawings or otherwise, involve extra cost under this Contract, he shall give the Principal Representative written Notice thereof within a reasonable time after the receipt of such instructions. In any event, before proceeding to execute the work, except in emergency endangering life or property, the procedure shall be as provided for under Article 35, CHANGES IN THE WORK. No such claim shall be valid unless so made.

In all such cases, the CONTRACTOR shall keep a correct account of the extra cost, in such form as the Principal Representative may direct, and shall present such account, supported by receipts. The Principal Representative shall be entitled to reject any claim for extra cost whenever the foregoing procedure is not followed.

The payments to the CONTRACTOR in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the CONTRACTOR made necessary by the change in the work, plus a reasonable amount of overhead and profit, determined solely with reference to the additional work, if any, required by the change, at or prior to the time of making the change.
Any claim by the CONTRACTOR arising by virtue of the Contract which is not disposed of by agreement shall be submitted in writing, together with any written and oral evidence in support thereof, to the Principal Representative for decision. Before making a decision the Principal Representative may notify the CONTRACTOR that additional written and/or oral evidence in support of the claim is required. If such notice is given, CONTRACTOR shall provide additional evidence to the Principal Representative within the time specified by the Principal Representative in the notice. The Principal Representative shall make his decision in writing and mail or otherwise furnish a signed copy to the CONTRACTOR. Pending the decision of the Principal Representative, the CONTRACTOR shall proceed diligently with the performance of the Contract.

Article 39. LIQUIDATED DAMAGES

If the CONTRACTOR shall neglect, fail or refuse to complete the work within the time agreed upon in this Agreement or any extension thereof, the CONTRACTOR shall be liable to the Principal Representative in the amount specified in the Special Conditions for this project for each and every calendar day the completion of the work is delayed beyond the time provided in this Agreement, as fixed and agreed liquidated damages, and not as a penalty. If the Principal Representative terminates the CONTRACTOR'S right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work along with any increased costs incurred by the Principal Representative in completing the work. If the Principal Representative does not terminate the CONTRACTOR'S right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

The Principal Representative shall have the right to deduct from and retain out of monies which may be due or which may become due and payable to the CONTRACTOR, the amount of such liquidated damages; and if the amount so retained by the Principal Representative is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay to the Principal Representative the amount necessary to effect payment in full of such liquidated damages.

Article 40. DAMAGES

If either party to this Contract shall suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage, except that the Principal Representative shall be responsible for and at his option insure against loss of use of any of his existing property, due to fire or otherwise, however caused.

Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

Article 41. STATE'S RIGHT TO DO THE WORK

If the CONTRACTOR should neglect to prosecute the work properly or fail to perform any provision of the Contract, the Principal Representative, after seven (7) days' written notice to the CONTRACTOR and the Surety may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the CONTRACTOR.

Article 42. STATE'S RIGHTS TO TERMINATE THE CONTRACT

A. General

If the CONTRACTOR should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed to take over his affairs, or if he
should fail to prosecute his work with due diligence and carry the work forward in accordance with his work schedule and the time limits set forth in the Contract Documents, or if he should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve Written Notice on the CONTRACTOR and the Surety on his performance and payment bonds, stating his intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases his right to exercise such remedy. In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after serving such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies, at once.

B. Conditions and Procedures

(a) The Principal Representative may terminate the services of the CONTRACTOR, which termination shall take effect immediately upon serving notice to the CONTRACTOR and his Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance of the Contract within ten (10) days after service of the notice of termination, the Principal Representative may take over the work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the work to completion by such means as he shall deem best. In the event of such termination of his service, the CONTRACTOR shall not be entitled to any further payment under his contract until the work is completed and accepted. If the Principal Representative takes over the work and if the unpaid balance of the contract price exceeds the cost of completing the work, including compensation for any damages or expenses incurred by the Principal Representative through the default of the CONTRACTOR, such excess shall be paid to the CONTRACTOR. If, however, the cost, expenses and damages as certified by the Principal Representative exceed such unpaid balance of the contract price, the CONTRACTOR and his Surety shall pay the difference to the Principal Representative.

(b) The Principal Representative may take control of the work and either make good the deficiencies of the CONTRACTOR or direct the activities of the CONTRACTOR in doing so, employing such additional help as the Principal Representative deems advisable. In such event the Principal Representative shall be entitled to collect from the CONTRACTOR and his Surety, or to deduct from any payment then or thereafter due the CONTRACTOR, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the CONTRACTOR, provided the Principal Representative approves the amount thus charged to the CONTRACTOR.

(c) The Principal Representative may require the Surety on the CONTRACTOR’S bond to take control of the work at once and see to it that all the deficiencies of the CONTRACTOR are made good, with due diligence. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the work, either upon termination of the services of the CONTRACTOR or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern in respect of the work done by the Surety, the Surety being substituted for the CONTRACTOR as to such provisions, including provisions as to payment for the work and provisions of this Article as to the right of the Principal Representative to do the work or take control of the work.

Article 43. TERMINATION FOR CONVENIENCE OF STATE

(a) The performance of work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall
determine that such termination is in the best interest of the State. Termination of work hereunder shall be effected by delivery to the CONTRACTOR of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the CONTRACTOR shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice. With respect to such canceled commitments the CONTRACTOR agrees to:

1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and

2. assign to the State, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the State 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.

(c) The CONTRACTOR shall submit his termination claim to the Principal Representative promptly after receipt of a Notice of Termination, but in no event later than ninety (90) days from the effective date of termination, unless one or more extensions in writing are granted by the Principal Representative upon written request of the CONTRACTOR within such one year period or authorized extension thereof. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the provisions of ARTICLE 107 (COST PRINCIPLES) of the Colorado Procurement Code and Rules as in effect on the date of this Contract.

(e) Subject to the provisions of paragraph (c) above, the CONTRACTOR and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the CONTRACTOR and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the CONTRACTOR is unable to cancel, the CONTRACTOR shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this Contract and the CONTRACTOR shall be paid the agreed amount.

(f) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the CONTRACTOR in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the CONTRACTOR will be entitled hereunder.
(g) The CONTRACTOR agrees to transfer title and deliver to the State, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

(1) completed or partially completed plans, drawings and information; and

(2) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the Notice.

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the CONTRACTOR under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the State to the CONTRACTOR under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manner as the Principal Representative may direct. Pending final disposition of property arising from the termination, the CONTRACTOR agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property related to this Contract which is in the possession of the CONTRACTOR and in which the State has or may acquire an interest.

(h) Any disputes as to questions of fact, which may arise hereunder, shall be subject to the provisions of ARTICLE 109 (REMEDIES) of the Colorado Procurement Code.

Article 44. CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the CONTRACTOR or of any one employed by him, then the CONTRACTOR may, on seven (7) days' written Notice to the Principal Representative and the PROJECT MANAGER, stop work or terminate this Contract and recover from the Principal Representative payment for all work executed, any losses sustained on any material, and a reasonable profit.

This provision shall not apply to work suspended due to conditions unsatisfactory for the prosecution of the work, including winter weather conditions.

Article 45. CLEANUP

The CONTRACTOR shall at all times keep the construction area free from accumulations of waste material or rubbish resulting from his work. Upon completion of the work, the CONTRACTOR shall remove from the vicinity of the work and haul all rubbish, trash, garbage, and construction debris to a county-approved disposal site. Additionally, the CONTRACTOR shall remove from the vicinity all unused materials, and the like, belonging to the CONTRACTOR or used under the CONTRACTOR'S direction during construction.

Cleanup is subject to the approval of the Principal Representative.

Article 46. PERIODIC PARTIAL PAYMENTS

On some occasions, after approval by the Principal Representative, payment may be made on account of materials not incorporated in the work but delivered and suitably stored at the site, or at some other location agreed upon in writing. Such payments shall be conditioned upon submission by the CONTRACTOR of bills of sale or such other procedure as will establish the Principal Representative’s title to such material or otherwise adequately protect the Principal Representative’s interest, including applicable insurance.
If the bid amount is between $50,000.00 and $149,999.00, 10 percent retainage will be withheld until the project has been satisfactorily completed and advertised. If the bid amount is $150,000.00 or over, 5 percent retainage will be withheld until the project has been satisfactorily completed and advertised.

The Division of Reclamation, Mining and Safety will accept original invoices only. Change order amounts and retainage must be invoiced separately from items included in the original contract. All invoices, except the final invoice, and the payments thereunder, shall be subject to correction in the next invoice following the discovery of any error. The final payment, or the retainage bill, shall state “Final Bill” on the invoice.

State law and regulations provide that CONTRACTORS will be paid within 45 days after receipt of a correct invoice. A State liability not paid within 45 days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. CONTRACTORS shall invoice separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate (24-30-202(24), C.R.S. as amended).

**Article 47. PAYMENTS WITHHELD**

The PROJECT MANAGER or the Principal Representative may hold, or, on account of subsequently discovered evidence, nullify the whole or any part of any invoice on account of:

(a) Defective work not remedied;
(b) Claims filed or reasonable evidence indicating probable filing of claims;
(c) Failure of the CONTRACTOR to make payment to subcontractors or for material or labor;
(d) A reasonable doubt that the Contract can be completed for the balance of the contract price then unpaid;
(e) Damage to another CONTRACTOR;
(f) Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations;
(g) Failure to submit weekly progress reports;
(h) Failure of the CONTRACTOR to keep his work progressing in accordance with his time schedule;
(i) Failure to keep a superintendent on the work;
(j) Unauthorized deviations by the CONTRACTOR from the Contract Documents.

When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts withheld.

If the Principal Representative deems inexpedient the correction of damaged work or of work not performed in accordance with the contract, equitable reduction of contract price shall be made.

**Article 48. FINAL INSPECTION**

The Principal Representative shall make final inspection of the project to determine whether the work has been completed in accordance with the Contract Documents. A final punch list shall be made by the Principal Representative on the Final Inspection and Certificate of Completion form in sufficient detail to fully outline to the CONTRACTOR:

a) Work to be completed, if any;
b) Work not in compliance with the drawings or specifications, if any;
c) Unsatisfactory work for any reason, if any.

If any punch-list results from the final inspection, the CONTRACTOR shall promptly rectify all items on it.

Article 49. FINAL INSPECTION AND CERTIFICATE OF COMPLETION

The Final Inspection and Certificate of Completion shall establish the completion date of the project.

Article 50. SETTLEMENT

The Principal Representative shall not authorize final payment until all items on the punch list have been completed, the Final Inspection and Certificate of Completion issued, and the Notice of CONTRACTOR’S Settlement published. Before the Principal Representative may advertise, the CONTRACTOR shall deliver the Principal Representative all guaranties and warranties, and daily or weekly Job Logs.

When the Principal Representative indicates acceptance of the work, the CONTRACTOR may requisition final payment, including retainage, on account of the contract price.

Before such final payment may be made the Principal Representative must comply with Title 38-26-107 C.R.S. as amended, which requires that publication of a notice of final settlement with the CONTRACTOR be made twice for projects over $120,000.00, and once for projects less than $120,000.00 in a newspaper of general circulation in the county wherein the Agreement was made (usually Denver County) and the county wherein the work was performed. The date fixed in such notice, before which final payment to the CONTRACTOR may not be made, must be no less than ten days after the publication of the notice.

Any unpaid creditor of the CONTRACTOR who supplied labor and/or material for the work has those ten days in which to file with the Principal Representative a verified statement of the amount due and unpaid. The Principal Representative must withhold from payment to the CONTRACTOR the total amount of such claim for a period of ninety days after the date in the notice fixed for settlement, but the Principal Representative may not directly make payment to the creditor(s). If within those ninety days a creditor does not reach settlement with the CONTRACTOR, he must file with the Principal Representative a notice that he has brought action at law, otherwise the Principal Representative, at expiration of ninety days, will pay the CONTRACTOR for the amount withheld.

Article 51. GUARANTY AND WARRANTIES

The CONTRACTOR shall furnish the Principal Representative with a written guaranty for one year covering all labor, materials and workmanship incorporated in the work. The CONTRACTOR, in instances of work performed or material or equipment furnished for which warranties are required by the specifications, shall procure such warranties and deliver them to the Principal Representative on completion of the work. Such warranties will in no way lessen the CONTRACTOR’S responsibilities under the Agreement. Whenever warranties or guarantees are required by the specifications for a period longer than one year, such longer period shall govern. Written guaranties must be received by the Principal Representative before final payment will be approved.

Article 52. ASSIGNMENT

The CONTRACTOR shall not assign the whole or any part of this Contract as any moneys due or to become due hereunder without the written consent of the Principal Representative. No assignment without said prior approval shall be valid. In case the CONTRACTOR assigns all or
part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the CONTRACTOR shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract, whether said service or material were supplied prior to, or after the assignment.

**Article 53. LIENS**

There is no right of Mechanic's Lien against publicly-owned property in the State of Colorado. However, as outlined in **Article 50 SETTLEMENT**, unpaid labor and/or materials suppliers for the work are by law provided certain alternate remedies.

**Article 54. POST-COMPLETION INSPECTIONS**

Final payment made to the CONTRACTOR on account of the work shall not operate to relieve the CONTRACTOR of responsibility for faulty material or workmanship, and unless otherwise provided the CONTRACTOR shall remedy any defect due thereto and pay for any damages resultant therefrom which shall appear within one year from the date of final acceptance of the work, which date will be that of the Final Inspection and Certificate of Completion.

If the CONTRACTOR fails promptly to correct the punch list items resulting from such inspections, the Principal Representative may correct such defects and deficiencies and backcharge the CONTRACTOR for the cost thereof.

**Article 55. ACCESS TO DOCUMENTS**

The CONTRACTOR shall grant access to the State, the Office of Surface Mining Reclamation and Enforcement, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purpose of audit, examination, excerpts and transcriptions. All required records shall be retained for three years after final settlement and all other matters are closed.

**Article 56. CORRUPT INFLUENCES**

The signatories hereto aver that they are familiar with 18-8-301 of seq. (Bribery and corrupt influences) and 18-8-401, et seq. (abuse of Public Office), C.R.S., as amended and that no violation of such provisions is present.

**Article 57. COLORADO SPECIAL PROVISIONS**

*THE SPECIAL PROVISIONS APPLY TO ALL CONTRACTS EXCEPT WHERE NOTED IN ITALICS.*

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor’s Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor’s services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1/1/09