

**PUBLIC WORKS DEPARTMENT  
MEMORANDUM # 2015 - 41**

DATE: October 12, 2015  
TO: Honorable Mayor Joyce Downing and City Council Members  
FROM: David H. Willett, Acting City Manager/Public Works Director  
SUBJECT: **Council Resolution 122**  
WWTP Headworks and Clarifier -- CMAR Contract



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**BACKGROUND**

The project team consisting of Northglenn staff, Providence Infrastructure Consultants (engineering/design), and JVA (project oversight and technical review) completed rigorous, three-step, four-month selection process for a Construction Manager at Risk (CMAR) for the WWTP Headworks and Clarifier project and recommended that the contract be awarded to **Moltz Construction, Inc.** This was presented for discussion at the September 21, 2015 Council Study Session. The contract documents have been prepared and signed by Moltz for City Council approval.

**BUDGET/TIME IMPLICATIONS**

If approved, this contract would be funded from the Public Works Department/Water and Wastewater Fund/Capital Improvement Projects account.

<b>WWTP Headworks and Clarifier CMAR Contract</b>	<b>\$46,095.00</b>
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This contract will be for the CMAR's preconstruction phase services, to begin at the 60 percent design milestone and carry on through to the completion of design. When the design is completed, the project team will negotiate a Guaranteed Maximum Price (GMP) for the construction of the project. The GMP will include the final Cost of Work, CMAR Fee, and Construction Contingency. The GMP will be submitted to City Council for review, and if approved, it will be added to this initial contract via addendum.

**RECOMMENDATIONS**

Attached to this memorandum is a Resolution that, if approved, would Authorize the Mayor to execute a contract between the City of Northglenn and **Moltz Construction, Inc.** for the WWTP Headworks and Clarifier project in the amount of **\$46,095.00**.

Staff recommends approval of this Resolution.

**STAFF REFERENCE**

Kent Kisselman, PE, Engineering Manager  
Tom Kawamoto, PE, Civil Engineer II

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**ATTACHMENTS**

- CMAR Contract

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-122  
Series of 2015

\_\_\_\_\_  
Series of 2015

A RESOLUTION APPROVING A CONSTRUCTION MANAGER CONTRACT BETWEEN THE CITY OF NORTHGLENN AND MOLTZ CONSTRUCTION, INC. FOR THE WASTEWATER TREATMENT PLANT HEADWORKS AND CLARIFIER PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Construction Manager Contract between the City of Northglenn and Moltz Construction, Inc., attached hereto, in an amount not to exceed \$46,095.00 for the Wastewater Treatment Plant Headworks and Clarifier Project is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED, at Northglenn, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

**CITY OF NORTHGLENN**  
**WWTP HEADWORKS AND CLARIFIER PROJECT 2015-017**

**Contract Between**  
**Owner and Construction Manager - Cost Plus Fee with an**  
**Option for a Guaranteed Maximum Price**

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This CONTRACT ("Contract") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2015, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

City of Northglenn  
11701 Community Center Drive  
Northglenn, Colorado  
Telephone: (303) 451-8326

**CONSTRUCTION MANAGER:**

Moltz Construction, Inc.  
8807 County Road 175  
PO Box 729  
Salida, CO 81201  
Telephone (719) 539-7319  
Email: eric@moltzconstruction.com

**PROJECT:**

Name: WWTP Headworks and Clarifier Project

WWTP Location: Northglenn WWTP, 5445 Weld County Road 2, Brighton, CO 80603

Description: The Northglenn Wastewater Treatment Plant (WWTP) is located in Weld County, just north of Weld County Road No. 2. Presently, the WWTP treats an average of 3.4 MGD. The existing treatment train includes aerated lagoons, activated sludge basins, secondary clarifiers, and ultraviolet disinfection. Upon completion of the project, the WWTP is expected to have a rated capacity of 4.2 MGD. The proposed project consists of the following components: Construction of a headworks building with mechanical screening, grit removal and handling, and odor control; construction of an additional secondary clarifier; construction of approximately 3,000 LF of force 27-inch diameter main; construction of a cast-in-place concrete influent splitter box at the head of the activated sludge basins; installation of a diesel fuel standby generator; construction of a new +/- 5,000 square foot operations building for the plant to house offices, conference room, laboratory and restroom facilities; decommissioning of the existing primary lagoons, which will no longer be required after the new headworks and secondary clarifier(s) are put into service; and new access roads and parking for the new operations building.

In consideration of the mutual covenants and obligations contained herein, Owner and Construction Manager agree as set forth herein.

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## **ARTICLE 1 SCOPE OF WORK**

- 1.1** Construction Manager shall perform all management and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **ARTICLE 2 CONTRACT DOCUMENTS**

- 2.1** The Contract Documents are comprised of the following:
  - 2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Contract issued in accordance with the General Conditions of Contract;
  - 2.1.2** The GMP Proposal (to be added by amendment as Exhibit A) if accepted by Owner.
  - 2.1.3** This Contract, including Exhibit A: CMAR Proposal, Exhibit B: General Conditions of Contract between Owner and Construction Manager ("General Conditions of Contract") and Exhibit C: City of Northglenn Attachment to Contract to Comply With C.R.S. 8-17.5-101, et seq.;
  - 2.1.4** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and

## **ARTICLE 3 INTERPRETATION AND INTENT**

- 3.1** Construction Manager and Owner, prior to execution of the Contract and again at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.1 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Construction Manager and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Contract or, if applicable, prior to Owner's acceptance of the GMP Proposal.
- 3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Contract, or if applicable, after Owner's acceptance of the GMP Proposal, Construction Manager and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.
- 3.3** Terms, words and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in this Contract and in the General Conditions of Contract.
- 3.4** If Owner's Project Criteria contain design specifications: (a) Construction Manager shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance

specifications; and (b) Construction Manager shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Construction Manager's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

- 3.5 The Contract Documents form the entire agreement between Owner and Construction Manager and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## ARTICLE 4 OWNERSHIP OF WORK PRODUCT

- 4.1 **Work Product.** All drawings, specifications and other documents and electronic data furnished by Construction Manager to Owner under this Contract ("Work Product") are deemed to be instruments of service and Construction Manager shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.
- 4.2 **Owner's Limited License upon Project Completion and Payment in Full to Construction Manager.** Upon Owner's payment in full for all Work performed under the Contract Documents, Construction Manager transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Construction Manager is at Owner's sole risk and without liability or legal exposure to Construction Manager or anyone working by or through Construction Manager (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.
- 4.3 **Owner's Limited License upon Owner's Termination for Convenience or Construction Manager's Election to Terminate.** If Owner terminates this Contract for its convenience as set forth in Article 8 hereof, or if Construction Manager elects to terminate this Contract in accordance with Section 11.4 of the General Conditions of Contract, Construction Manager shall, upon Owner's payment in full of the amounts due Construction Manager under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:
- 4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and
- 4.3.2 Construction Manager agrees to transfer at no cost the right to use any Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.
- 4.4 **Owner's Limited License upon Construction Manager's Default.** If this Contract is terminated due to Construction Manager's default pursuant to Section 11.2 of the General Conditions of Contract, then Construction Manager grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Construction Manager was not in default, Owner shall be deemed to have terminated the Contract for convenience, and Construction Manager shall be entitled to the rights and remedies set forth in Section 4.3 above.

- 4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## **ARTICLE 5 CONTRACT TIME**

- 5.1 Date of Commencement.** After the Owner has accepted the GMP proposal in Accordance with Section 6.6 and the Owner is ready for construction of the Project to begin, it shall give a written notice to proceed ("Owner's Notice to Proceed") to Construction Manager. The Work shall commence within ten (10) business days after the Owner's Notice to Proceed is given, unless the parties mutually agree otherwise in writing. The date on which the Work commences shall be referred to as the Date of Commencement. The Construction Manager shall give Owner written notice of the Date of Commencement.
- 5.2 Substantial Completion and Final Completion.**
- 5.2.1** Substantial Completion of the entire Work shall be achieved no later than 540 calendar days after the Date of Commencement ("Scheduled Substantial Completion Date"). Substantial Completion is the date when all Work is complete pursuant to the definition of Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract.
- 5.2.2** Final Completion of the Work or identified portions of the Work shall be achieved no later than 630 calendar days after the Date of Commencement ("Scheduled Final Completion Date"). Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.6 of the General Conditions of Contract.
- 5.2.3** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.
- 5.3 Time is of the Essence.** Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 5.4 Liquidated Damages.** Construction Manager understands that if Substantial and Final Completion Dates are not attained by the Scheduled Dates, Owner will suffer damages which are difficult to determine and accurately specify. Construction Manager agrees that if Substantial Completion Date is not met, the Construction Manager shall pay Owner Two Thousand Dollars (\$2,000.00) as liquidated damages for each day that Substantial Completion extends beyond the completion date. In addition, the Construction Manager agrees that if Final Completion Date is not met, the Construction Manager shall pay Owner Two Thousand Dollars (\$2,000.00) as liquidated damages for each day that Final Completion extends beyond the completion date. If both dates are not met simultaneously, the liquidated damages shall be additive.

## ARTICLE 6 CONTRACT PRICE

- 6.1 Contract Price.** Owner shall pay Construction Manager in accordance with Article 6 of this Contract and Article 6 of the General Conditions of Contract for Pre-Construction Services (Section 6.2 below), the Cost of the Work (Section 6.3 below), and a Construction Manager's Fee (Section 6.4 below). Payment for the Cost of the Work and Construction Manager's Fee will be subject to Owner's acceptance of the GMP established in accordance with Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract. The sum of all of the payments described in this Section 6.1 shall be referred to in this Contract as the "Contract Price."
- 6.2 Pre-Construction Services.** Construction Manager's Pre-Construction Services shall include, but are not limited to, design coordination and reviews, coordination with potential subcontractors and equipment suppliers, development of a Guaranteed Maximum Price (GMP), development of a project schedule, development of a schedule of values, and a variety of meetings with the Design Consultant and Owner. Owner shall pay the cost for Pre-Construction Services in accordance with Sections 6.3.2 and 6.3.3; and total reimbursable cost shall not exceed a maximum of Forty Six Thousand Ninety Five Dollars (\$46,095.00). Payment for Pre-Construction Services shall terminate on the date the GMP proposal is accepted by the Owner.
- 6.3 Cost of the Work.** The term Cost of the Work shall mean costs reasonably and actually incurred by Construction Manager in the proper performance of the Work. The Cost of the Work shall be based on the cost included in the GMP established in accordance with Section 6.6 hereof: Costs in the GMP shall include, but are not limited to, the following:
- 6.3.1** Wages of direct employees of Construction Manager performing the Work at the Site or, with Owner's agreement, at locations off the Site. Construction Labor Rates are set forth in Exhibit A of this Contract.
- 6.3.2** Wages or salaries of Construction Manager's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site. Supervisor and Administrative Labor Rates are set forth in the CMAR Proposal (Exhibit A of this Contract).
- 6.3.3** Costs incurred by Construction Manager in association with Sections 6.3.1 and 6.3.2 above shall include costs for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Construction Manager.
- 6.3.4** The reasonable cost of travel to the Project Site, accommodations and meals for Construction Manager's Supervisory or Administrative personnel necessarily and directly incurred in connection with the performance of the Work. Travel costs shall not exceed the per diem allowances and standard mileage rates as established by the United States Internal Revenue Service. Pier Diem rates shall be based on the Denver Metropolitan area being the project location.
- 6.3.5** Payments properly made by Construction Manager to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors. No separate mark-up is allowed for Subcontractors. However, the costs for management of the Subcontractors can be paid in accordance with the Labor Rates in Exhibits 6.3.1 and 6.3.2.
- 6.3.6** Costs incurred by Construction Manager in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that the defective, damaged or nonconforming Work was caused by matters beyond the reasonable control of Construction Manager. If the costs associated with such Work are



recoverable from insurance or Subcontractors, Construction Manager shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

- 6.3.7** Costs for the procurement, transportation, inspection, testing, and storage and handling, of materials and supplies incorporated or reasonably used in completing the Work.
- 6.3.8** Costs (less salvage value) of materials, supplies, temporary facilities and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- 6.3.9** Costs of removal of debris and waste from the Site.
- 6.3.10** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- 6.3.11** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work.
- 6.3.12** Premiums for insurance and bonds required by this Contract or the performance of the Work.
- 6.3.13** All fuel and utility costs incurred in the performance of the Work.
- 6.3.14** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- 6.3.15** Costs for permits, royalties, licenses, tests and inspections incurred by Construction Manager as a requirement of the Contract Documents.
- 6.3.16** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 6.3.17** Accounting and data processing costs related to the Work.
- 6.3.18** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- 6.4 Construction Manager's Fee.** In addition to the cost reimbursement due the Construction Manager in accordance with Sections 6.2 and 6.3, Owner shall pay Construction Manager a fixed fee ("Construction Manager's Fee"). The Construction Manager's Fee shall be calculated as follows:
  - 6.4.1** If the Work is conducted pursuant to Section 6.6.1.4.2, the Construction Manager's Fee shall be percentage and amount as indicated in the CMAR Proposal Attachment. This percentage, as stated in the CMAR proposal in Exhibit A is 5.00%. The Construction Manager's Fee shall be paid to Construction Manager as the Work progresses, as a part of each pay application, based on the amount of the Cost of the Work set forth in the pay application.
  - 6.4.2** If Owner accepts the GMP Proposal, pursuant to either Section 6.6.1.3 or 6.6.1.4.1, and if the final total Cost of the Work is lower than the amount of the Cost of the Work used to determine the accepted GMP (see Section 6.6.1.1.1.i), the total Construction Manager's Fee due to the Construction Manager shall be the percentage based on the total Cost of the Work at the end of the project.

If the Owner and Construction Manager mutually agree to modify the scope of the Work after the GMP is accepted and this modification results in a lower total Cost of the Work, the total Construction Manager's Fee shall be based on the lower total Cost of the Work. However, the Construction Manager shall be paid a portion of the savings based on the Shared Savings terms described in Section 6.6.2

## **6.5 Non-Reimbursable Costs.**

**6.5.1** The following shall not be deemed to be included in determining the Cost of the Work:

- 6.5.1.1** Compensation for Construction Manager's personnel stationed at Construction Manager's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.
- 6.5.1.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.
- 6.5.1.3** The cost of Construction Manager's capital used in the performance of the Work.
- 6.5.1.4** Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
- 6.5.1.5** Any work not specifically shown or described in the Construction Documents.

## **6.6 The Guaranteed Maximum Price ("GMP").**

**6.6.1** Established after Execution of this Contract.

**6.6.1.1 GMP Proposal.** Construction Manager shall submit a GMP Proposal to Owner during the period that pre-construction services are being completed which shall include the following, unless the parties mutually agree otherwise:

**6.6.1.1.1** The GMP shall be the sum of:

- i. The Cost of the Work as defined in Section 6.3 hereof and
- i. Construction Manager's Fee as defined in Section 6.4 hereof.
- ii. Construction Manager's Contingency as defined in Section 6.6.1.1.4.

**6.6.1.1.2** The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria and Preliminary Construction Documents, which are set forth in detail and are attached to the GMP Proposal;

**6.6.1.1.3** A list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

**6.6.1.1.4** The Construction Managers Contingency shall be the contingency percentage and amount determined by the Construction Manager to be adequate to cover potential increases in the Cost of Work during the performance of the construction. This percentage, as stated in the CMAR proposal in Exhibit A, is 5.00%.

- 6.6.1.1.5 The Scheduled Substantial Completion Date established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;
  - 6.6.1.1.6 A schedule of values for all equipment to be used and work to be performed at the Site;
  - 6.6.1.1.7 Quotes from major equipment suppliers
  - 6.6.1.1.8 Proposals from all major subcontractors
  - 6.6.1.1.9 If applicable, a statement of additional services which may be performed but which are not included in the GMP and which, if performed with the written consent of the Owner, shall be the basis for an increase in the GMP and/or Contract Time(s); and
  - 6.6.1.1.10 The GMP Proposal must be accepted within 30 calendar days after the GMP Proposal is provided to Owner ("GMP Proposal Deadline").
- 6.6.1.2 Review and Adjustment to GMP Proposal.** Promptly after submission of the GMP Proposal, Construction Manager and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Construction Manager of such comments or findings. If appropriate, Construction Manager shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.
- 6.6.1.3 Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Construction Manager, in writing on or before the GMP Proposal Deadline, the GMP and its basis shall be set forth in an amendment to this Contract.
- 6.6.1.4 Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, or fails to notify Construction Manager in writing on or before the GMP Proposal Deadline that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Construction Manager shall meet and confer as to how the Project will proceed, with Owner having the following options:
- 6.6.1.4.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.3 above;
  - 6.6.1.4.2 Owner may authorize Construction Manager to continue to proceed with the Work on the basis of reimbursement as provided in Sections 6.3 and 6.4 hereof without a GMP, in which case all references in this Contract to the GMP shall not be applicable; or
  - 6.6.1.4.3 Owner may terminate this Contract for convenience in accordance with Article 8 hereof; provided, however, in this event, Construction Manager shall be entitled to the payment provided for in Section 8.1 hereof.

If Owner fails to exercise any of the above options on or before the GMP Proposal Deadline, Construction Manager shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.1.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Construction Manager shall be entitled to the payment provided for in Section 8.1 hereof.

## 6.6.2 Savings.

**6.6.2.1** If the sum of the actual Cost of the Work and Construction Manager's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows: Twenty Five percent (25%) to Construction Manager and Seventy Five percent (75%) to Owner.

**6.6.2.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Construction Manager incurs costs after Final Completion which would have been payable to Construction Manager as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Construction Manager shall be paid by Owner accordingly.

**6.7 Performance Incentives.** Owner and Construction Manager have agreed to discuss and potentially include in the GMP proposal, performance incentives for odor control, lagoon decommissioning and discharge permit compliance. The details of these performance incentives will be determined during the preconstruction services phase and included as part of the amendment for the GMP Proposal.

## ARTICLE 7 PROCEDURE FOR PAYMENT

### 7.1 Progress Payments.

**7.1.1** Construction Manager shall submit to Owner by the first business day of each calendar month, beginning with the first month after the Date of Commencement, Construction Manager's application for payment in accordance with Article 6 of the General Conditions of Contract ("Application for Payment"). The Application for Payment shall be for the portion of the Work completed in the preceding calendar month.

**7.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.1.3** The amount of Construction Manager's Fee to be included in Construction Manager's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Construction Manager's Fee.

### 7.2 Retainage on Progress Payments.

**7.2.1** Owner will retain five percent (5%) of each Application for Payment. Except as otherwise provided in Sections 7.2.2 and 7.3 below, the withheld amounts shall be retained by Owner until the Work is completed satisfactorily and finally accepted by Owner.

**7.2.2** If Owner finds that satisfactory progress is being made in any phase of the Work, it may, upon written request by Construction Manager, authorize final payment from the withheld amounts to the Construction Manager or its Subcontractors who have completed their work in a manner finally acceptable to Owner. Before the payment is made, Owner shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the Work.

**7.3 Final Payment.** Construction Manager shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract, together with the information required by Section 6.7.2 of the General Conditions of Contract. Upon receipt of the Final Application for Payment and the information required by Section 6.7.2, and if Owner is satisfied that Construction Manager has achieved Final Completion of the Project and the Work, Owner shall publish a notice of final settlement as required by C.R.S. 38-26-107. Owner shall thereafter make a final settlement and payment on Construction Manager's properly submitted and accurate Final Application for Payment promptly after the expiration of the ten day notice period set forth in C.R.S. 38-26-107; provided, however, that if any claims are filed pursuant to this statute, Owner shall withhold funds from any amounts due to Construction Manager and pay such withheld amounts in the manner provided by C.R.S. 38-26-107 et seq.

**7.4 Record Keeping and Finance Controls.** Construction Manager acknowledges that this Contract is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Construction Manager shall submit with the Application for Progress Payment all documentation required to support the Cost of Work represented in the application. During the performance of the Work and for a period of three (3) years after Final Payment, Owner's agents, representatives and accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Construction Manager's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Construction Manager shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Construction Manager's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Construction Manager as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, with the composition of such multiplier or markup not being subject to audit.

## **ARTICLE 8 TERMINATION FOR CONVENIENCE**

**8.1** Upon ten (10) days' written notice to Construction Manager, Owner may, for its convenience and without cause, elect to terminate this Contract. In such event, Owner shall pay Construction Manager for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors; and

**8.1.3** A proportional amount of the Construction Manager's Fee in accordance with the Cost of Work completed as of the termination date.

**8.2** If Owner terminates this Contract pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

## **ARTICLE 9 REPRESENTATIVES OF THE PARTIES**

**9.1 Owner’s Representatives.**

- 9.1.1** Owner designates David Willett, Director of Public Works, as its Senior Representative (“Owner Senior Representative”), to exercise the Owner’s authority and responsibility for avoiding and resolving disputes under Section 10 of the General Conditions of Contract and Tom Kawamoto, Civil Engineer II, as its representative (“Owner Representative”) to exercise the Owner’s authority and responsibility under Section 3.4 of the General Conditions of Contract. Their contact information is as follows:

City of Northglenn  
11701 Community Center Drive  
Northglenn, Colorado  
Telephone: (303) 451-8326  
Email: [tkawamoto@northglenn.org](mailto:tkawamoto@northglenn.org)

**9.2 Construction Manager’s Representatives.**

- 9.2.1** Construction Manager designates the individual listed below as its Senior Representative (“Construction Manager’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10 of the General Conditions of Contract:

Eric Moltz  
Moltz Construction, Inc.  
8807 County Road 175  
PO Box 729  
Salida, CO 81201  
Telephone: (719)-539-7319  
Email: [eric@moltzconstruction.com](mailto:eric@moltzconstruction.com)

Construction Manager designates the individual listed below as its Construction Manager’s Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Mike Butler  
Moltz Construction, Inc.  
975 Merchant Court  
Windsor, CO 80550  
Telephone: (970)-330-3248  
Email: [mike@moltzconstruction.com](mailto:mike@moltzconstruction.com)

**ARTICLE 10 BONDS AND INSURANCE**

- 10.1 Insurance.** Construction Manager shall procure insurance in accordance with the requirements hereto and in accordance with Article 5 of the General Conditions of Contract.

- 10.1.1** The Construction Manager agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Construction Manager pursuant to this Section. Such insurance shall be in addition to any other

insurance requirements imposed by this Contract or by law. The Construction Manager shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

**10.1.2** Construction Manager shall procure and maintain, and shall cause all Subcontractors and Sub-Subcontractors to procure and maintain insurance coverage listed in subparagraphs (a)-(c) below. Such coverage shall be procured and maintained with firms and insurers acceptable to the Owner. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Construction Manager pursuant to this Section. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Minimum coverage limits shall be as indicated below unless specified otherwise in the General Conditions of Contract.

- a) Worker Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Contract.
- b) General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and FIVE MILLION DOLLARS (\$5,000,000) per job aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations,) personal injury (including coverage for contractual and employee acts,) blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.
- c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Construction Manager's owned, hired or non-owned vehicles assigned to be used in performance of the Work. The policy shall contain a severability of interests provision.

**10.1.3** The policies required by paragraph (b) above and by paragraph (c) above shall be endorsed to include the Owner and the Owner's officers, directors and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, directors or employees shall be excess and not contributory insurance to that provided by Construction Manager. No additional insured endorsement to the policy required by paragraph (b) above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Construction Manager shall be solely responsible for any deductible losses under any policy required above.

**10.1.4** Construction Manager shall be responsible for purchasing and maintaining Builder's Risk Insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named, the Owner, the Construction Manager, the Subcontractors and their Subcontractors and shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, defective design, negligent workmanship or defective materials. The Construction Manager shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

**10.1.5** Prior to the Date of Commencement set forth in Section 5.1, Construction Manager shall provide three (3) copies of certificates of insurance, issued by the insurance companies who are providing the

insurance or their authorized agents, to Owner as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificates shall identify this Contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Owner. These certificates shall also be provided for the insurance required to be carried by all Subcontractors and Sub-Subcontractors before they start to perform any work on the Project.

- 10.1.6** Failure on the part of the Construction Manager to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Contract upon which the Owner may immediately terminate this Contract or, at its discretion, the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all moneys so paid by the Owner shall be repaid by the Construction Manager or deducted from moneys due to Construction Manager.
- 10.1.7** The Owner reserves the right to request and receive, at any time(s), a certified copy of any policy and any endorsement thereto.
- 10.1.8** The parties hereto understand and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protection provided by the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., as from time to time amended, or otherwise available to the Owner and its officers, directors and employees.
- 10.1.9** Depending on the nature and scope of the service to be provided under this Contract, additional insurance requirements may be specified by the Owner.
- 10.1.10** The Construction Manager shall not commence work under this Contract until it has obtained all insurance required by this Contract, and the several provisions hereof, nor shall the Construction Manager allow any Subcontractor or Sub-Subcontractor to commence work on the Project until all similar insurance required by the Subcontractor or Sub-Subcontractor has been so obtained and approved.
- 10.2 Bonds and Other Performance Security.** Construction Manager shall provide the following performance bond and labor and material payment bond or other performance security:

Prior to the Date of Commencement set forth in Section 5.1, Construction Manager shall furnish a Performance Bond and a Payment Bond, each in an amount at equal to the Contract Price as security for the faithful performance and payment of all of Construction Manager's obligations under the Contract Documents. These Bonds shall remain in effect for the duration of the Warranty Period. Construction Manager shall also furnish other Bonds that may be required by the General Conditions of Contract. All Bonds shall be in the substance and form prescribed by the Contract Documents, shall comply with the requirements of C.R.S. 38-26-105 and 106 and other applicable Colorado law, and shall be executed by such Sureties as (1) are licensed to conduct business in the State of Colorado and (2) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Accounts, US Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the Authority to Act. If the Surety on any Bond furnished by the Construction Manager is declared bankrupt, or becomes insolvent, or its rights to do business in Colorado are terminated, the Construction Manager shall, within five (5) days thereafter, substitute another bond and Surety, both of which shall be acceptable to the Owner.



## **ARTICLE 11 OTHER PROVISIONS**

- 11.1** The General Conditions of Contract are attached to this Contract as Exhibit B and are incorporated herein by reference. The parties intend that the General Conditions of Contract be interpreted as being consistent with and complementary to the provisions of this Contract. However, if there is an irreconcilable inconsistency between any provision of this Contract and of the General Conditions of Contract, the General Conditions of Contract shall control.
- 11.2** Pursuant to C.R.S. 24-91-103.6, Owner represents that the amount of money appropriated by it for the Project is equal to or in excess of the Contract Price.
- 11.3** The effective date of this Contract is the last date on which it is signed by the Owner and Construction Manager.
- 11.4** If any Legal Requirements require that certain terms and provisions be included in this Contract, or requires that certain actions be taken with respect to this Contract, such terms, conditions and requirements shall be deemed to be included herein whether or not they are expressly set forth in this Contract or the other Contract Documents.
- 11.5** In order to comply with the provisions of C.R.S. 8-17.5-101 et seq., Contractor shall execute and deliver the certification attached hereto as Exhibit C at the time that it executes this Contract.



**CITY OF NORTHGLENN  
WWTP HEADWORKS AND CLARIFIER PROJECT 2015-017**

**EXHIBIT A**

**Construction Manager at Risk Proposal**

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## CRITERIA 3.9: ESTIMATED PROJECT COSTS

Having carefully examined all the requirements of the previously issued RFQ, this RFP, the proposed form of Agreement, and any attachments to them, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

**GUARANTEED MAXIMUM PRICE:** The guaranteed maximum price (GMP) for this project will be the total of all fees and costs paid by the Owner to the CMAR. For this project it will be the total of the Pre-Construction Fee, the Construction Fee, the Post-Construction Fee, the General Conditions Cost and the Cost-of-Work. The final GMP will be determined after the 95% design completion stage of the design. It will include the fees listed herein and the final Cost-of-Work determined at the 95% design completion stage. The "Estimated Cost of Work" provided herein is not binding upon the CMAR as part of this proposal. It is intended to provide an overall "price range" for the project for the Owner's consideration. Award of the CMAR contract will not be based on a low-bid price included herein.

**3.9.1 PRE-CONSTRUCTION PHASE MAXIMUM NOT-TO-EXCEED COST:** The Respondent shall identify a maximum not to exceed Pre-Construction Phase Cost, pursuant to Article 6.2 of the Agreement.

**Pre-Construction Phase Cost    \$ 46,095.00**

*As an attachment to your proposal, provide a brief proposed scope of pre-construction phase services including tasks, number of meetings, number and type of reviews, site visits, assistance with potholing and verifying existing infrastructure locations, etc.*

*Note: The final scope and fee for the pre-construction phase will be discussed and negotiated prior to executing the CMAR contract.*

**3.9.2 ESTIMATED COST OF WORK:** The respondent shall provide a non-binding preliminary construction cost estimate representing the Cost-of-Work as described in Article 6.3 of the CMAR contract. Note that this cost includes all overhead, insurance, bonds, temporary facilities and expenses.

This estimate will be used as the basis for the Cost-of-Work project estimates if the respondent is selected to negotiate a contract with the Owner. This estimated cost of work is non-binding. The respondent shall attach a complete breakdown of the estimated preliminary cost of work to this proposal. The Owner will review this preliminary cost of work breakdown for completeness and to determine the respondents overall understanding of the project.

## CRITERIA 9: ESTIMATED PROJECT COSTS, CONT'D

*Note: If the respondent fails to include supporting documentation sufficient to illustrate how this cost was tabulated, the proposal will be considered non responsive. This information shall be included as an attachment. The respondent may designate this information as proprietary and confidential which will be an allowable exception to Section 1.5 of this RFP. If the respondent chooses to designate this information as confidential and proprietary, it shall be included in a separate sealed envelope and not bound with the proposal*

**Estimated Cost of Work based on 30% Drawings (Non-Binding) \$ 10,769,011.00**

**Please see estimate assumptions and applicable quotes on the following pages for more supporting information. The estimate has been enclosed in a separate confidential envelope.**

**3.9.3 CONSTRUCTION MANAGER FEE:** The Respondent shall identify a maximum not to exceed Construction Management Fee, pursuant to Article 6.4 of the CMAR contract. The cost will be based on a fixed percentage of the Cost of Work per Article 6.4.1 of the CMAR contract. Please also list your Construction Manager Fee percentage.

**Construction Manager Cost \$ 538,450.00**  
**Construction Manager Fee Percentage 5% of cost of work**

**3.9.4 PROPOSED CONSTRUCTION CONTINGENCY:** The selected CMAR may elect to include a contingency budget in the cost of work to be included in the GMP. If the CMAR wishes to include a contingency cost, please designate the estimated contingency amount below and provide a brief discussion as to why inclusion of a contingency in the GMP is warranted, how you set its value, and what it might be used for over the course of the project. List the expected contingency here and do not include as part of the Cost of Work above.

**Estimated Construction Contingency (Non-Binding) \$ 538,450.00**

**3.9.5 PROPOSED PERSONNEL RATES:** The respondent shall provide by separate attachment an hourly rate sheet to be used for calculating costs for each of the maximum not-to-exceed cost categories listed above. All office and field management personnel shall be listed that are employees of the respondent and who will be used as labor for costs in these fee categories. All other fixed costs will be passed directly through to the Owner without mark-up.

**Please see Attachment 5.2 for proposed personnel rates.**



**Total Cost Summary**

**City of Northglenn Public Works Department  
 WWTP Headworks and Clarifier Project  
 Moltz Construction, Inc.  
 July 16, 2015**

CSI DIVISION	DESCRIPTION	COST	PERCENT OF TOTAL
01	General Requirements	\$ 837,368.00	7%
02	Sitework	\$ 2,115,689.00	18%
03	Concrete	\$ 1,511,201.00	13%
04	Masonry	\$ 230,354.00	2%
05	Metals	\$ 457,503.00	4%
06	Wood and Plastics	\$ 334,008.00	3%
07	Thermal and Moisture Protection	\$ 159,268.00	1%
08	Doors and Windows	\$ 159,581.00	1%
09	Finishes	\$ 424,975.00	4%
10	Specialties	\$ 3,487.00	0%
11	Equipment	\$ 1,354,256.00	11%
12	Furnishings	\$ -	0%
13	Special Construction	\$ -	0%
14	Conveying Equipment	\$ 42,412.00	0%
15	Mechanical	\$ 1,703,875.00	14%
16	Electrical	\$ 1,435,034.00	12%
<b>SUBTOTAL DIVISIONS 1-16</b>		<b>\$ 10,769,011.00</b>	<b>90%</b>
<b>OTHER COSTS</b>			
Contingency (5 % of cost of work)		\$ 538,450.00	5%
Construction Manager Fee (5% of cost of work)		\$ 538,450.00	5%
Pre-Construction Services		\$ 46,095.00	0%
<b>TOTAL PROJECT COST</b>		<b>\$ 11,892,006.00</b>	<b>100%</b>



# 5.1 PRE-CONSTRUCTION PHASE SCOPE OF SERVICES

TASK NO	PRE-CONSTRUCTION TASK DESCRIPTION	MCI PERSONNEL		Jon Turner		Curtis Stevens		Mike Seniano / Cassidy / Erik Frankfort		Total Hours	Total Cost		
		TITLE	RATE	Hours	Cost	Hours	Cost	Hours	Cost				
1	Design Work Shops (2 ea @ 4hrs)	Mike Butler Division Manager / Estimator	\$50.50	8	\$ 468.00	8	\$ 436.00	0	\$ -	24	\$ 1,320.00		
2	Bi-Weekly Design Meetings (6 ea @ 3 hrs)	Mike Butler Division Manager / Estimator	\$50.50	18	\$ 1,053.00	18	\$ 981.00	0	\$ -	36	\$ 2,034.00		
3	Construction Cost Estimate (60%)	Mike Butler Division Manager / Estimator	\$50.50	40	\$ 2,340.00	40	\$ 4,360.00	80	\$ 4,160.00	240	\$ 12,940.00		
4	Construction Cost Estimate (GMP)	Mike Butler Division Manager / Estimator	\$50.50	30	\$ 1,755.00	80	\$ 4,360.00	40	\$ 2,080.00	210	\$ 11,315.00		
5	Construction Schedule / Phasing Plans	Mike Butler Division Manager / Estimator	\$50.50	4	\$ 234.00	8	\$ 872.00	8	\$ 416.00	28	\$ 1,522.00		
6	Contract Document Review (3 ea @ 4 hrs)	Mike Butler Division Manager / Estimator	\$50.50	8	\$ 468.00	12	\$ 654.00	0	\$ -	32	\$ 1,746.00		
7	Site Visits, Issue Specific Review (3 ea @ 4 hrs)	Mike Butler Division Manager / Estimator	\$50.50	8	\$ 468.00	12	\$ 654.00	0	\$ -	32	\$ 1,746.00		
<b>LABOR SUBTOTAL (HRS / COST)</b>				<b>116</b>	<b>\$ 6,786.00</b>	<b>226</b>	<b>\$ 12,317.00</b>	<b>120</b>	<b>\$ 6,240.00</b>	<b>140</b>	<b>\$ 7,280.00</b>	<b>602</b>	<b>\$ 32,623.00</b>
<b>EXPENSES</b>													
Local Mileage													
Courier Express Mailings													
Reproduction													
<b>EXPENSES SUBTOTAL</b>													
<b>POTHOLING &amp; CONTROL SURVEY (3 ea, 8 hr days)</b>													
Construction Superintendent													
Field Engineer													
Potholing Contractor													
<b>POTHOLING SUBTOTAL</b>													
<b>TOTAL PRECONSTRUCTION SERVICES ESTIMATE</b>													
<b>\$ 46,095.00</b>													

**Pre-Construction Services Not-to-Exceed Cost Summary**

City of Northglenn Public Works Department  
 WWTP Headworks and Clarifier Project  
 Moltz Construction, Inc - Preconstruction Phase Breakdown  
 July 16, 2015

\* All rates include labor burden.  
 \* We did not put in an allowance for advertising to solicit bidders. This can be added after discussed with the team to determine if this is needed.

## 5.2 RESPONDENT'S HOURLY RATE SHEET

ITEM NO.	TITLE	HOURLY RATE *
1	Division Manager	\$ 58.50
2	Sr. Project Manager	\$ 58.50
3	Project Manager	\$ 54.50
4	Assistant Project Manager	\$ 42.00
5	Project Superintendent	\$ 52.00
6	Assistant Project Superintendent	\$ 38.00
7	Senior Estimator	\$ 58.50
8	Estimator	\$ 52.00
9	Scheduling	\$ 54.50
10	Safety Director	\$ 52.00
11	Project Engineer	\$ 36.50
12	Field Engineer	\$ 44.00
13	Project Coordinator	\$ 32.50
14	Field Engineer Rodman/Survey Helper	\$ 26.00

\*Please note all rates include Labor Burden.

\*Labor Burden includes: worker's compensation, general liability, umbrella liability, pollution liability, health insurance, medical, long term disability, employer 401K, FUTA, SUTA, and social security/ medicare.



**CITY OF NORTHGLENN  
WWTP HEADWORKS AND CLARIFIER PROJECT 2015-017**

**EXHIBIT B**

**General Conditions of Contract between Owner and Construction Manager**

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## ARTICLE 1 GENERAL

### 1.1 Mutual Obligations

- 1.1.1 Owner and Construction Manager commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### 1.2 Basic Definitions

- 1.2.1 **Contract** refers to the executed Contract between Owner and Construction Manager - Cost Plus Fixed Fee with an Option for a Guaranteed Maximum Price.
- 1.2.2 **Basis of Design Documents** are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."
- 1.2.3 **Construction Documents** are the documents, consisting of drawings and specifications, prepared or assembled by the Owner's Design Consultant consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Construction Manager, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.
- 1.2.4 **Day or Days** shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- 1.2.5 **Design Consultant** is a qualified, licensed design professional who is not an employee of Construction Manager and is retained by the Owner to furnish design services required to support the Owner and the Construction Manager in completing the Work.
- 1.2.6 **Final Completion** is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the Punch List prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2 of the General Conditions of Contract.
- 1.2.7 **Force Majeure Events** are those events that are beyond the control of both Construction Manager and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.
- 1.2.8 **General Conditions of Contract** refers to this General Conditions of Contract between Owner and Construction Manager.
- 1.2.9 **GMP Exhibit** means that amendment attached to the Contract, which will have been agreed upon by Owner and Construction Manager after the execution of the Contract pursuant to Section 6.6 of the Contract.
- 1.2.10 **GMP Proposal** means that proposal developed by Construction Manager in accordance with Section 6.6 of the Contract.
- 1.2.11 **Hazardous Conditions** are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

- 1.2.12 Legal Requirements** are all applicable statutes, laws, codes, ordinances, rules, regulations, orders and decrees of any federal, state, or local government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any of the Work.
- 1.2.13 Owner's Project Criteria** are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Construction Manager's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.
- 1.2.14 Project** means the project identified on Page 1 of the Contract.
- 1.2.15 Site or Project Site** is the land or premises on which the Project is located.
- 1.2.16 Subcontractor** is any person or entity retained by Construction Manager as an independent contractor to perform a portion of the Work and shall include material men and suppliers.
- 1.2.17 Sub-Subcontractor** is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include material men and suppliers.
- 1.2.18 Substantial Completion or Substantially Complete** means the date on which the Work, as modified by any Change Orders agreed to by Owner and Construction Manager, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- 1.2.19 Work** is comprised of all Construction Manager's reviews, support, management, construction and other services required by the Contract Documents for the management and construction of the Project, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
- 1.2.20 Preliminary Construction Documents** are preliminary drawings and technical specifications provided to the Construction Manager with sufficient detail about the project's design and construction objectives as well as material and equipment requirements. These drawings and specifications are to be used by the Construction Manager in developing the project's guaranteed maximum price and a schedule of values.
- 1.2.21 Work Products** are all drawings, specifications, and other documents and electronic data furnished by Construction Manager to Owner under this Contract.

## **ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES AND RESPONSIBILITIES**

### **2.1 General Services.**

- 2.1.1** Construction Manager's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the proper performance of the Work. Construction Manager's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Construction Manager. Construction Manager's Representative may be replaced only with the mutual agreement of Owner and Construction Manager.

**2.1.2** Construction Manager shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Construction Manager's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Contract as an exhibit at the time the Contract is executed, Construction Manager shall prepare and submit, a schedule for the execution of the Work for Owner's review and response with the GMP Exhibit or Proposal. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Construction Manager to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Construction Manager of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Construction Manager of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Owner shall, consistent with applicable state licensing laws, provide through qualified and licensed design professionals the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Construction Manager to complete the Work consistent with the Contract Documents.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Construction Manager and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that are needed to complete the Work, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Construction Manager and Owner shall meet and confer about the needed submissions, with Construction Manager identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1,

shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, discussion, documentation, will be maintained by Construction Manager and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the needed interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Construction Manager's schedule.

- 2.4.2** Owner shall submit to Construction Manager Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting's minutes. The design review meeting shall include representatives of the Owner, Construction Manager, Design Consultant, and Construction Manager's primary Subcontractors. The parties shall have a design review meeting to discuss, and Construction Manager shall review the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Construction Manager shall proceed with construction in accordance with the approved Construction Documents and shall receive one set of approved Construction Documents prior to commencement of construction.
- 2.4.3** Owner and Construction Manager shall review and approve interim design submissions, meeting minutes, and the Construction Documents for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Construction Manager's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Owner to Construction Manager.
- 2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Owner through the Design Consultant may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

- 2.5.1** Construction Manager shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Construction Manager for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Contract, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions required to be made to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

- 2.6.1** Construction Manager shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.
- 2.6.2** Construction Manager shall provide reasonable assistance to Owner in obtaining any permits, approvals and licenses that are Owner's responsibility.

## **2.7 Construction Manager's Construction Phase Services.**

- 2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Construction Manager shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Construction Manager to complete construction of the Project consistent with the Contract Documents.
- 2.7.2** Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.7.3** Construction Manager shall employ only personnel or Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Construction Manager shall give Owner ten days written notice prior to entering into a contract with a Subcontractor. Owner may reasonably object to Construction Manager's selection of any Subcontractor, and if Owner objects, Construction Manager shall not enter into the contract with or otherwise utilize the Subcontractor. However, the Contract Price and/or Contract Time(s) may be adjusted to the extent that Owner's decision regarding the Subcontractor adversely impacts Construction Manager's cost and/or time of performance.
- 2.7.4** Construction Manager assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.7.5** Construction Manager shall coordinate the activities of itself and all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Construction Manager agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.7.6** Construction Manager shall keep the Site free from debris, trash and construction wastes to permit Construction Manager to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Construction Manager shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.
- 2.8 Construction Manager's Responsibility for Project Safety.**
- 2.8.1** Construction Manager recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Construction Manager assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Construction Manager shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Construction Manager's Safety Representative shall be an individual

stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Construction Manager's personnel, Subcontractors and others as applicable.

**2.8.2** Construction Manager and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirements. Construction Manager will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Construction Manager's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Construction Manager's Warranty.**

**2.9.1** Construction Manager warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Construction Manager's warranty obligation includes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Construction Manager will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Construction Manager agrees to correct any Work that is found to not be in non-conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of two (2) years from the date of Substantial Completion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Construction Manager shall, within five (5) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Construction Manager fails to commence the necessary steps within such five (5) day period, Owner, in addition to any other remedies provided under the Contract Documents or applicable law, may provide Construction Manager with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Construction Manager shall be responsible for all reasonable costs incurred by Owner in performing such corrective Work. If the nonconforming Work creates an emergency requiring an immediate response, the five (5) day periods identified herein shall be deemed inapplicable, the Construction Manager shall perform the corrective Work immediately and if it fails to do so, the Owner may perform the corrective Work without notice with its own forces.

**2.10.3** The warranty period referenced in Section 2.10.1 above applies only to Construction Manager's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Construction Manager's other obligations under the Contract Documents.

## **ARTICLE 3 OWNER'S SERVICES AND RESPONSIBILITIES**

### **3.1 Duty to Cooperate.**

- 3.1.1** Owner shall, throughout the performance of the Work, cooperate with Construction Manager and perform its responsibilities, obligations and services in a timely manner to facilitate Construction Manager's timely and efficient performance of the Work and so as not to delay or interfere with Construction Manager's performance of its obligations under the Contract Documents.
- 3.1.2** Owner, through the Design Consultant, shall provide interim design submissions and Construction Documents consistent with times set forth in Construction Manager's schedule.
- 3.1.3** Owner shall give Construction Manager timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

### **3.2 Furnishing of Services and Information.**

- 3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Construction Manager's information and use the following, all of which Construction Manager is entitled to rely upon in performing the Work:
  - 3.2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - 3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - 3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Construction Manager to perform the Work;
  - 3.2.1.4** A legal description of the Site;
  - 3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and
  - 3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.
- 3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent private land or property owners that are necessary to enable Construction Manager to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**



**3.3.1** At Construction Manager's request, Owner shall promptly furnish reasonable evidence satisfactory to Construction Manager that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Construction Manager may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Construction Manager shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Contract Construction Manager shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Construction Manager to assume obligations or responsibilities greater than those existing obligations Construction Manager has under the Contract Documents.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Construction Manager to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Construction Manager with prompt notice if he observes any failure on the part of Construction Manager to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Construction Manager and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall provide reasonable assistance to Construction Manager in obtaining permits, approvals and licenses that are Construction Manager's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Construction Manager in order to enable Construction Manager to timely complete the Work consistent with the Contract Documents.

## **ARTICLE 4 HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS**

### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Construction Manager will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** The parties acknowledge that Owner owns the Northglenn Wastewater Treatment Plant that is the subject of the Project ("WWTP"), and it does own the real property upon which the WWTP is located. Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that any Hazardous Conditions located in the WWTP, or any Hazardous Conditions located elsewhere on the Site that were caused by Owner, are remediated or

rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless. If the Hazardous Conditions are encountered outside of the WWTP and were not caused by Owner, Owner and Construction Manager shall promptly meet and decide how to proceed to address the Hazardous Conditions.

- 4.1.3** Construction Manager shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions for which Owner is responsible have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. If the Hazardous Conditions were not caused by Owner, Construction Manager shall not be obligated to resume work until the Hazardous Conditions are addressed to the mutual satisfaction of Owner and Construction Manager.
- 4.1.4** Construction Manager will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Construction Manager's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.
- 4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Construction Manager, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions located in the WWTP or elsewhere on the Site if the Hazardous Conditions were caused by Owner. Owner is not responsible for Hazardous Conditions on the Site that were not caused by Owner.
- 4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Construction Manager shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions.**

- 4.2.1** Should the Construction Manager or its Subcontractors encounter, or the Owner discover, during the progress of the work subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or 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 the Contract ("Differing Site Conditions"), Owner shall be promptly notified in writing of such conditions. Owner will cause the Design Consultant thereupon to promptly investigate the conditions and, if he finds they do materially differ and merit an increase or decrease in the cost, or the time required for performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.
- 4.2.2** Upon encountering a Differing Site Condition, Construction Manager or its Subconsultants shall provide prompt written notice to Owner of such condition, which notice shall not be later than two (2) days after such condition has been encountered. Construction Manager shall, to the extent reasonably

possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

- 4.2.3** This Section 4.2 does not apply to Hazardous Conditions, which shall be handled in the manner set forth in Section 4.1.

## **ARTICLE 5 INSURANCE AND BONDS**

### **5.1 Construction Manager's Insurance Requirements.**

- 5.1.1** Construction Manager is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in Contract. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Contract.
- 5.1.2** Construction Manager's insurance shall specifically delete any design-build (DB), construction manager at risk (CMAR) or similar exclusions that could compromise coverages because of the delivery approach of the Project.
- 5.1.3** Prior to commencing any construction services hereunder, Construction Manager shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.

### **5.2 Owner Insurance.**

- 5.2.1** If the Project includes as addition to or is adjacent to an existing structure, the Construction Manager and the subcontractors shall be named as additional insureds for the Owner's property insurance covering such structure and its contents.
- 5.2.2** If the Owner occupies or uses a part or parts of the Project prior to Substantial Completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the structure and until all insurance companies providing insurance for the Project consent to such occupancy by endorsement to the insurance policies.
- 5.2.3** The Construction Manager and its Subcontractors shall be named as additional insureds in any insurance policy for the Project that may be obtained by the Owner.
- 5.2.4** Any loss covered under Owner's property insurance shall be adjusted with Owner, Construction Manager and its Subcontractors and shall be made payable to them as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.
- 5.2.5** Owner and Construction Manager waive subrogation against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all

damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Construction Manager and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Contract.

### **5.3 Bonds and Other Performance Security.**

- 5.3.1** Construction Manager shall obtain performance and payment bonds, or other forms of performance security, the amount, form and other conditions of such security as set forth in Contract.
- 5.3.2** All bonds furnished by Construction Manager shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

## **ARTICLE 6 PAYMENT**

### **6.1 Schedule of Values.**

- 6.1.1** If the Contract is amended by Owner acceptance of Construction Manager's GMP Proposal/Exhibit, Construction Manager shall have ten (10) days to submit for Owner's review and approval a schedule of values for all of the Construction Work ("Schedule of Values"). The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Construction Manager throughout the Work.
- 6.1.2** The Owner will timely review and approve the Schedule of Values so as not to delay the submission of the Construction Manager's first application for payment. The Owner and Construction Manager shall timely resolve any differences so as not to delay the Construction Manager's submission of its first application for payment.

### **6.2 Monthly Progress Payments.**

- 6.2.1** On or before the date established in the Contract, Construction Manager shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed during the preceding calendar month. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.
- 6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive title to the equipment and materials free and clear of all liens and encumbrances.
- 6.2.3** The Application for Payment shall constitute Construction Manager's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and

clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Construction Manager's receipt of payment, whichever occurs earlier.

### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Contract, Owner shall pay Construction Manager all amounts properly due, subject to the retainage provisions of Paragraph 7.2 of the Contract. If Owner determines that Construction Manager is not entitled to all or part of an Application for Payment as a result of Construction Manager's failure to meet its obligations under the Contract Documents, it will notify Construction Manager in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Construction Manager must take to rectify Owner's concerns. Construction Manager and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Construction Manager may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Construction Manager all undisputed amounts in an Application for Payment within the times required by the Contract.

### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Construction Manager any undisputed amount that becomes due, Construction Manager, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof.

### **6.5 Construction Manager's Payment Obligations.**

**6.5.1** Construction Manager will pay Subcontractors, in accordance with its contractual obligations to such parties and in accordance with Colorado law, including without limitation C.R.S. 24-91-103(2), all the amounts Construction Manager has received from Owner on account of their work. Construction Manager will impose similar requirements on Subcontractors to pay those parties with whom they have contracted. Construction Manager will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.2 hereof.

### **6.6 Substantial Completion.**

**6.6.1** Construction Manager shall notify Owner when it believes the Work is Substantially Complete. Within ten (10) days of Owner's receipt of Construction Manager's notice, Owner and Construction Manager will jointly inspect the Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If the Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work, (ii) the remaining items of Work that have to be completed before final payment ("Punch List"), (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Construction Manager's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Final Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) Construction Manager and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (ii) Owner and Construction Manager agree that Owner's use or occupancy will not interfere with Construction Manager's completion of the remaining Work.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Construction Manager, Owner shall make final payment by the time and in the manner required in the Contract, provided that Construction Manager has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Construction Manager shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Construction Manager waiving, upon receipt of final payment by Construction Manager, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Construction Manager's surety or sureties to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract.

**6.7.3** Upon making final payment, Owner waives all claims against Construction Manager except claims relating to (i) Construction Manager's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Construction Manager's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Construction Manager under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Construction Manager, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **ARTICLE 7 INDEMNIFICATION**

### **7.1 Payment Claim Indemnification.**

**7.1.1** Provided that Owner is not in breach of its contractual obligation to make payments to Construction Manager for the Work, Construction Manager shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure

of Construction Manager, its Subcontractors and Sub-Subcontractors, or those for whose acts Construction Manager is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Construction Manager shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond or other applicable form of bond. If Construction Manager fails to do so, Owner will have the right to discharge the claim or lien and hold Construction Manager liable for costs and expenses incurred, including attorneys' fees.

## **7.2 Construction Manager's General Indemnification.**

**7.2.1** Construction Manager, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Construction Manager, Subcontractors, Sub-Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.2.2** If an employee of Construction Manager, Subcontractors, Sub-Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable makes a claim against Owner, its officers, directors, employees, or agents, Construction Manager's indemnity obligation set forth in Section 7.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Construction Manager, Subcontractors, Sub-Subcontractors or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **ARTICLE 8 TIME**

### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Construction Manager agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Contract.

### **8.2 Delays to the Work.**

**8.2.1** If Construction Manager is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Construction Manager is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Construction Manager to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

## **ARTICLE 9 CHANGES TO THE CONTRACT PRICE AND TIME**

### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Contract signed by Owner and Construction Manager, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Construction Manager shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Construction Manager and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Construction Manager for reasonable costs incurred for estimating services and services involved in the preparation of proposed revisions to the Contract Documents.

**9.1.4** Pursuant to C.R.S. 24-91-103.6(2)(b), no change order, as defined in C.R.S. 24-101-301(2), or other form of order or directive shall be issued by Owner requiring additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, unless Construction Manager is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the Contract.

**9.1.5** Pursuant to C.R.S. 24-91-103.6(2)(c), if Owner issues any form of order or directive requiring additional compensable work to be performed, Owner shall reimburse the Construction Manager for its costs, as part of its monthly Applications for Payment, for all additional directed work performed until a Change Order is finalized. In no instance shall such reimbursements be required before the Construction Manager has submitted an estimate of cost to Owner for the additional compensable work to be performed. The provisions of this section do not apply when there is an unresolved disagreement between Owner and Construction Manager, as set forth in Section 9.4.3 of these General Conditions of Contract.

## **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Construction Manager shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

## **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including quality, performance and workmanship required by the Contract Documents. Construction Manager may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Construction Manager



has informed and gained approval from the Owner, in writing, of any such changes and records such changes on the documents maintained by Construction Manager.

#### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Contract or as subsequently agreed to between the parties;

**9.4.1.2** Costs, fees and any other markups set forth in the Contract

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Construction Manager because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Construction Manager disagree upon whether Construction Manager is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Construction Manager shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Construction Manager shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Construction Manager to perform the services in accordance with Owner's interpretations, Construction Manager shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Construction Manager (i) directing Construction Manager to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Construction Manager shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Construction Manager does not prejudice Construction Manager's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

#### **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

### **ARTICLE 10 CONTRACT ADJUSTMENTS AND DISPUTES**

#### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Construction Manager or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the

occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## **10.2 Dispute Avoidance and Resolution.**

- 10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Construction Manager and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 10.2.2** Construction Manager and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Construction Manager's Representative and Owner's Representative which shall conclude within five (5) days of the written notice provided for in Section 10.1.1 unless the Owner and Construction Manager mutually agree otherwise.
- 10.2.3** If a dispute or disagreement cannot be resolved through Construction Manager's Representative and Owner's Representative, Construction Manager's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than ten (10) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within fourteen (14) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Construction Manager and consistent with the mediator's schedule, the mediation shall commence within thirty (30) days of the submission of the dispute to mediation.

## **10.3 Litigation.**

- 10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by litigation, and venue for such litigation shall be in the District Court of Adams County, Colorado.

## **10.4 Duty to Continue Performance.**

- 10.4.1** Unless provided to the contrary in the Contract Documents, Construction Manager shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Construction Manager, pending the final resolution of any dispute or disagreement between Construction Manager and Owner.

## **10.5 Consequential Damages.**

- 10.5.1** Notwithstanding anything herein to the Contrary (Except as set forth in Section 10.5.2 below), neither Construction Manager nor Owner shall be liable to the Other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation, or financing.
- 10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages set forth in Article 5 of the Contract, which both parties recognize has been established, in part, to reimburse Owner for damages that might otherwise be deemed to be consequential.

## **ARTICLE 11 STOP WORK AND TERMINATION FOR CAUSE**

### **11.1 Owner's Right to Stop Work.**

- 11.1.1** Owner may, without cause and for its convenience, order Construction Manager in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.
- 11.1.2** Construction Manager is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

### **11.2 Owner's Right to Perform and Terminate for Cause.**

- 11.2.1** If Construction Manager persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.
- 11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Construction Manager that it intends to terminate the Contract unless the problem cited is cured by Construction Manager. Construction Manager shall have fourteen (14) days after such notice is given to cure the problem, provided, however, that if the problem cannot reasonably be cured within the fourteen day period, Construction Manager shall have a reasonable time to cure if it commences measures to cure the problem within the fourteen day period and proceeds diligently thereafter to cure it. If Construction Manager fails to cure the problem within the time periods set forth above, then Owner may declare the Contract terminated for default by providing written notice to Construction Manager of such declaration.
- 11.2.3** Upon declaring the Contract terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Construction Manager hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such

termination, Construction Manager shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. The Contract establishes a Guaranteed Maximum Price and Construction Manager will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Construction Manager shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Construction Manager's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Contract.

### **11.3 Construction Manager's Right to Stop Work.**

**11.3.1** Construction Manager may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Construction Manager's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Construction Manager has the right to provide Owner with written notice that Construction Manager will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Construction Manager's notice. If Owner does not cure the problem within such seven (7) day period, Construction Manager may stop the Work. In such case, Construction Manager shall be entitled to make a claim for adjustment to the Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Construction Manager's Right to Terminate for Cause.**

**11.4.1** Construction Manager, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Contract for cause for the following reasons:

**11.4.1.1** The Work has been stopped for more than sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Construction Manager or anyone for whose acts Construction Manager may be responsible.

**11.4.1.2** Owner's failure to provide Construction Manager with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for more than sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Construction Manager in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Construction Manager has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Construction Manager may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured by Owner. Owner shall have fourteen (14) days after such notice is given to cure the problem, provided, however, that if the problem cannot reasonably be cured within the fourteen day period, Owner shall have a reasonable time to cure if it commences measures to cure the problem within the fourteen day period and proceeds diligently thereafter to cure it. If Owner fails to cure the problem within the time periods set forth above, then Construction Manager may declare the Contract terminated for default by providing written notice to Owner of such declaration. In such case, Construction Manager shall be entitled to recover in the same manner as if Owner had terminated the Contract for its convenience under Article 8 of the Contract.

## **11.5 Bankruptcy of Owner or Construction Manager.**

**11.5.1** If either Owner or Construction Manager institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Construction Manager to stop Work under any applicable provision of these General Conditions of Contract.

## **ARTICLE 12 ELECTRONIC DATA**

### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and other Work Product may be transmitted among Owner, Construction Manager, Design Consultant, and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Construction Manager shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-

upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Contract, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Contract. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **ARTICLE 13 MISCELLANEOUS**

### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public

domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project unless otherwise required by law or court order to disclose the information.

### **13.2 Assignment.**

**13.2.1** Neither Construction Manager nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

### **13.3 Successorship.**

**13.3.1** Construction Manager and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### **13.4 Governing Law.**

**13.4.1** The Contract and all Contract Documents shall be governed by the laws of the State of Colorado, without giving effect to its conflict of law principles.

### **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

### **13.6 No Waiver.**

**13.6.1** The failure of either Construction Manager or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice or other documents be provided to the other party, such notice or documents will be deemed to have been validly given (i) at the time of delivery if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated on Page 1 of the Contract, or (iii) if transmitted by facsimile, at the time stated in a machine generated confirmation that notice was received at the facsimile number, as set forth on Page 1 of the Contract, of the intended recipient.

### **13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.



**CITY OF NORTHGLENN  
WWTP HEADWORKS AND CLARIFIER PROJECT 2015-017**

**EXHIBIT C**

**ATTACHMENT TO CONTRACT TO COMPLY WITH C.R.S. 8-17.5-101, et seq.**

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This document is an attachment to, and the provisions of this document are incorporated by reference in, a contract (the "Contract") between The City of Northglenn (referred to in this document as the "City") and Moltz Construction Inc. (referred to in this document as the "Contractor") dated the \_\_\_\_\_ day of \_\_\_\_\_, 2015. The Contractor certifies and agrees as follows:

1. The Contractor shall not:
  - Knowingly employ or contract with an illegal alien to perform work under the Contract; or
  - Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
2. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Contract through participation in either the E-Verify Program or the Department Program (as those terms are defined in Section 8-17.5-101, C.R.S.).
3. The Contractor is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while the Contract is being performed.
4. If the Contractor obtains actual knowledge that a subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, the Contractor is required to:
  - Notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - Terminate the subcontract with the subcontractor if within three days of receiving the notice required in the above bullet paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

5. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking.

6. If the Contractor violates any of the provisions stated above, the City may terminate the Contract for a breach of the Contract. If the Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City.

Moltz Construction Company, Inc.

8807 County Road 175

PO Box 729

Salida, CO 81201

By: 

Name: Eric L. Moltz

Title: President