

AMENDMENT TO AIA DOCUMENT A201-1997

GENERAL CONDITIONS TO THE CONTRACT FOR CONSTRUCTION

THIS AMENDMENT shall modify the terms and conditions of AIA Document A201-1997 - General Conditions of the Contract For Construction. This amendment shall modify the terms and conditions of that document to the extent that it shall supplement and supersede all conditions of that document as set forth below. Any conflict between the terms of this amendment and AIA Document A201-1997 shall be resolved in favor of the terms of this amendment. At all points where the paragraph number is set forth below, it is to correspond and supplement a similarly numbered paragraph in AIA Document A201-1997. This document shall be considered a part of the Contract Documents as if fully set forth in the Agreement.

At all points within the Agreement, whenever the term "architecture" is used, the term "engineering" shall be substituted.

At all points within the Agreement, whenever the term "Architect" is used, the term "Owner" shall be substituted.

The deletions, modifications and additions to AIA Document A201-1997 are set forth below:

1.1.1. The Contract Documents consist of all documents set forth in similarly numbered paragraphs of A201 in addition to the following:

1. Instructions to bidders;
2. Notification of bid;
3. Specifications;
4. Executed bid form;
5. Notice of Award;
6. Notice to Proceed;
7. Non-Collusion Affidavit;
8. Performance and Payment Bonds;
9. The form of agreement fully executed.

1.6.1. This paragraph shall read as follows:

All drawings, specifications, data, documents or software prepared by the Architect for the purpose of this contract and required by the scope of services of this contract shall belong exclusively to the Owner and shall be deemed to be "works made for hire" under the copyright laws of the United States. To the extent any of those items may not, by operation of law or otherwise, be works made for hire, the Architect hereby assigns to the Owner the ownership of the copyright in the deliverable items, and the Owner shall have the right to obtain and hold in its own name, copyrights, registrations, and similar protections. The Architect agrees to give the Owner or its designee all assistance reasonably required to perfect such rights. To the extent that any pre-existing materials are contained in the deliverable items, the Contractor grants to the Owner an irrevocable, non-exclusive, worldwide, royalty-free license to use, execute, publish, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing materials and derivative works thereof and to authorize others to do any, some, or all of the foregoing.

2.1.1. The following shall be added to this paragraph:

Additionally, at all points within this Agreement, the term Architect shall be stricken and the term Owner substituted. Whenever performance is required by the Architect, such performance shall be read to be performed by the Owner. Whenever performance is to be achieved by the Architect in relationship to the Owner, the Owner alone shall be responsible for the duties set forth therein.

2.2.1. This paragraph shall be stricken.

2.4.1. This paragraph shall read as follows:

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within a seven (7) day period (after receipt of written notice by the Owner) to commence and continue correction of such default and neglect with diligence and promptness, the Owner may, after such seven day period, give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor, within such second seven-day period, after receipt of such second notice, fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate change order shall be issued deducting from payments then or thereof due the Contractor the cost of correcting such

deficiencies, including compensation for the Architect and its respective consultants additional services and expenses made necessary by such default, neglect or failure. If payments then or thereof due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

3.2.1. Strike the last sentence of this paragraph and add the following to this paragraph:

The Contractor recognizes that all Contract Documents were reviewed prior to the submittal of its bid. All errors, inconsistencies, or omissions shall be reported to the Owner and Architect prior to commencement of the Work. Failure to comply with this provision shall bar any claim by the Contractor for inconsistencies, errors or omissions in the contracts.

3.2.3. This paragraph shall read as follows:

If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1. and 3.2.2., the Contractor shall make Claims as provided in Subparagraphs 4.3.6. and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1. and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect or Owner.

3.10.3. This paragraph shall read as follows:

The Contractor shall perform the Work in accordance with the most recent schedule submitted to the Owner and Architect.

3.18.1. This paragraph shall read as follows:

To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Owner, Architect, Architect's and Owner's consultants, agents and employees of any of them from and against all claims, damages, losses and expenses included, but not limited to, attorney's fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, death or injury to or destruction of tangible property,

but only to the extent caused by the negligent acts or omissions of the Contractor, subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or a person described in this paragraph.

4.1.1. This paragraph shall be stricken.

4.2.2. This paragraph shall read as follows:

The Architect as representative of the Owner will visit the site at intervals appropriate to the stage of the Contractor's operation:

(1) To become familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed; and

(2) To guard the Owner against defects and deficiencies in the Work; and

(3) To determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

The Architect will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the work, since these are solely the Contractor's rights and responsibility under the Contract Documents.

4.2.3. The following shall be added to the existing paragraph:

However, the Architect shall be responsible to report to the Owner the failure of the Contractor to perform Work in accordance with the Contract Documents to the extent the Architect knew or should have known of such failures through the exercise of its professional expertise.

4.2.7. This paragraph shall read as follows:

The Architect will review and approve or take other appropriate action upon the Contractor's submittal such as Shop Drawing, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design

concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.13. This paragraph shall be stricken.

4.3.2. The time frames expressed in this paragraph shall be altered to ten (10) days.

4.3.4. The time frames expressed in this paragraph shall be altered to ten (10) days.

4.4.1. This paragraph shall read as follows:

Decision of Architect. Claims, including those alleged as an error/omission by the Architect, but excluding those arising under Paragraphs 10.3 through 10.5 shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to any further action by the Contractor.

4.4.2. This paragraph shall read as follows:

The Architect will review claims and within ten (10) days of receipt of the claim take one or more of the following actions:

- (1) Request additional supporting data from the claimant or a response with supporting data from the other party;
- (2) Reject the claim in whole or in part;
- (3) Approve the claim;
- (4) Suggest a compromise; or
- (5) Advise the contractor that the Architect is unable to resolve the claim if the Architect lacks sufficient information to evaluate the merits of the claim or if the Architect concludes

that in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the claim.

4.4.3. This paragraph shall read as follows:

In evaluating claims, the Architect may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Architect in rendering a decision.

4.4.5. This paragraph shall read as follows:

The Architect will approve or reject claims by written decision which shall state the reasons therefore and which shall notify the parties of any change in the contract sum or contract time, or both. The approval or rejection of a claim by the Architect shall be advisory and subject to further action by the Owner.

4.4.6. This paragraph shall be stricken.

4.4.7. This paragraph shall be stricken.

4.4.8. This paragraph shall be stricken.

4.5. All provisions of this paragraph on mediation shall be stricken.

4.6. All provisions of this paragraph on arbitration shall be stricken.

6.1.4. This paragraph shall be stricken.

7.3.3.4. This phrase shall be stricken.

7.3.6. This paragraph shall be stricken.

7.5.1. This paragraph shall be added and read as follows:

Change Order Appropriation. No Change Order shall be issued pursuant to this section which causes the aggregate amount payable under this Contract to exceed the amount appropriated for the original Contract Price unless the Contractor has received written assurance from the Owner that additional lawful appropriations to cover costs of additional Work have been made or unless other remedies are provided herein that allow the Contractor to receive compensation for such additional Work.

8.3.1. This paragraph shall read as follows:

If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, then the contract time shall be extended by change order for such reasonable time as the Architect and Owner may determine if a claim for such delay is submitted within ten (10) days of the act giving rise for the need for an extension.

8.3.3. This paragraph shall read as follows:

This Paragraph No. 8.3.3 does not preclude recovery of damages for delay by either party under other provisions of the contract if a claim is submitted as required by this Agreement.

9.4.2. This paragraph shall read as follows:

The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner based upon the Architect's evaluation of the Work, and the data comprising the application for payment, that the Work has progressed to the point indicated and that the quality of Work is in accordance with the Contract Documents. The foregoing representations are subject to evaluation of the Work for conformance with the Contract Documents upon substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the order to substantiate the Contractor's right to payment, or made examination to ascertain how or for what purpose the Contractor has used money previously paid on account for the contract sum. However, such certification shall be a representation to the Owner that the Architect does not have knowledge of any reasonable evidence that any subcontractor has or will be able to assert a claim against the Owner for non-payment.

9.6.1. The following shall be added to this paragraph:

A public entity awarding a contract exceeding one hundred fifty thousand dollars for the construction, alteration, or repair of any highway, public building, public work, or public improvement, structure, or system shall authorize partial payments of the amount due under such contract at the end of each calendar month, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. The public entity shall pay at least Ninety-Five percent of the calculated value of completed work. The withheld percentage of the contract price of any contracted work, improvement, or construction may be retained until the contract is completed satisfactorily and finally accepted by the public entity.

9.6.7. This paragraph shall read as follows:

Payments received by the Contractor for Work properly performed by subcontractors and suppliers shall be held by the Contractor for those subcontractors or suppliers who perform the Work or furnished materials or both under contract with a Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not co-mingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach for the requirements of this provision.

9.7 This paragraph shall be stricken.

9.9.1. This paragraph shall read as follows:

The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibility assigned to each of them for payment, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of the warranties required by the Contract Documents. When the Contractor considers a portion of the Work substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under subparagraph 9.8.2, "Consent of the Contractor to Partial Occupancy or Use Shall Not Be Unreasonably Withheld." The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

9.10.2. The final two sentences of this paragraph shall be stricken.

10.3.3. This paragraph shall be stricken.

10.5. This paragraph shall be stricken.

11.1.2. This paragraph shall read as follows:

The insurance required by subparagraph 11.1.1.1 shall be the minimum required by law. For all other required insurance coverage set forth in subparagraph 11.1.1 the minimum coverage shall be no less than \$1,000,000 with a single limit combined aggregate limitation of \$2,000,000 or as specified in the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended. If any aggregate limits set forth above are reduced below the stated amount because of claims made or paid during the required policy period, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

11.2.1. This paragraph shall be stricken.

11.3.2. This paragraph shall be stricken.

11.3.3. This paragraph shall read as follows:

The Contractor shall include the Owner and Architect as persons or entities, as additional insureds on the Contractor's liability insurance coverage required under Paragraph 11.1. Additionally, if Contractor's insurer determines that the Owner has an insurable interest as a result of the contractual relationship created herein, the Owner shall also be named as an additional insured on the Comprehensive Automobile Liability Policy. Proof of Workers' Compensation & Employer's Liability and Unemployment Insurance is required. Certificate(s) of insurance or copies of policies and appropriate endorsements required by this Contract shall be delivered to the Owner at the time originals of this Contract, executed by the Contractor, are delivered to the Owner's Representative, identified below, for execution by the Owner.

11.4. All provisions of this paragraph shall be stricken.

11.5.1. This paragraph shall read as follows:

Unless otherwise provided in the Contract Documents, the Contractor shall be required to furnish both a payment bond and a

performance bond, both bonds in the full amount of the contract amount and together covering faithful performance of the contract and payment of obligations arising thereunder.

12.2.2.3. This paragraph shall read as follows:

The one-year period for correction of Work shall be extended by corrective work performed by the Contractor pursuant to this paragraph.

12.3.1. This paragraph shall read as follows:

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the contract sum shall be reduced as appropriate and equitable. Such adjustments shall be effected whether or not final payment has been made.

13.1.2 This paragraph is added and shall read as follows:

The commencement of statutory limitation periods, together with the length of such statutory limitation periods, shall be controlled by Colorado Law existing at the time of execution of this Agreement and shall include the provisions of § 13-80-104, C.R.S., as amended.

13.6.1. This paragraph shall read as follows:

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of 0.00 percent.

13.7 This paragraph shall be stricken.

14.1.1.4 of this paragraph shall be stricken.

14.2.1.3 of this paragraph shall read:

disregards law, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

14.2.2 The first paragraph of this provision shall read:

When any of the above reasons exists, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate employment of the Contractor and may;

ARTICLE 15 ADDITIONAL PROVISIONS

The following shall be added:

15.1 LIQUIDATED DAMAGES

15.1.1 For failure to complete the Work defined for substantial completion of this agreement as specified in the Contract Documents by the 31st day of December, 2024, the Contractor shall be assessed liquidated damages in the amount of not less than \$0 per calendar day.

15.2 LOCAL LABOR

15.2.1 The Contractor agrees that he will comply with the provisions of §8-17-101, C.R.S., as amended concerning the use of Colorado Labor in development of this project. The Contractor further agrees that it will not utilize, nor propose utilization of any employee who is not a lawful resident or citizen of the United States, and that any such person so employed shall be removed from the site forthwith upon the Contractor gaining knowledge of unlawful resident status of such employee.

15.3 Sole Source Contracting - Campaign Contribution - Compliance

15.3.1 The parties hereby incorporate by reference all provisions of Article XXVIII, Section 15, Section 16, and Section 17 of the Constitution of the State of Colorado (individually and collectively, "Article XXVIII"), as well as the definitions set forth at Article XXVIII, Section 2(4.5), (8.5), (14.4), (14.6) and any other definitions of terms used herein that are included in Section 2 of Article XXVIII.

15.3.2 Pursuant to the provisions of Section 15 of Article XXVIII, the Contractor hereby agrees, to the extent this Agreement or Contract ("Contract") is a sole source government contract, if the Contractor is, a "Contract Holder" under Section 2(4.5) of Article XXVIII, for the duration of this Contract and for two years after the termination date of this Contract, shall cease making, causing to be made or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor or on behalf of his or her immediate family member and for the benefit of any political party or the benefit of any candidate for any elected office of the State or any of its political subdivisions, as such are defined in Article XXVIII. Further, in accordance with Section

17(2) of Article XXVIII, the Contractor certifies that the Contractor has not made a contribution intended to promote or influence the result of an election on a ballot issue if this Contract is a sole source government contract relating to that particular ballot issue.

15.3.3 Pursuant to the terms of this Contract and the provisions of Section 17(3) of Article XXVIII, the parties hereby agree that any violation of the provisions of this Paragraph No. 15.4 shall be considered a breach of the terms of this Contract, permitting the BOCC to terminate this Contract or exercise any other remedies for breach available at law. Additionally, the parties agree that for any intentional violation of Article XXVIII, Section 15 or 17(2), the Contractor shall be ineligible to hold any sole source government contract, including this Contract, or public employment with the State or any of its political subdivisions for a period of three years.

15.3.4 Pursuant to the provisions of Section 16 of Article XXVIII, the Contractor shall be solely and exclusively responsible for preparing and tendering to the State all required information as set forth in that Section.

15.3.5 The Contractor shall be solely and exclusively responsible for determining the cumulative amount of all sole source government contracts with all governmental entities involving the Contractor during any calendar year, as detailed in Section 2(14.4) of Article XXVII.

15.3.6 The Contractor shall be solely and exclusively responsible for determining the natural persons and entities to whom the provisions of this Paragraph No. 15.4 shall be applied, as such are listed as Contract Holders in Section 2(4.5) of Article XXVIII.

15.3.7 The terms of this Section shall apply to any non-governmental entity or natural person, who is a party to a government contract that was not the subject of a public and competitive bidding process involving at least three bids prior to award. The Contractor shall be solely and exclusively responsible for determining the applicability of the definition of "sole source government contract", contained herein and in Section 2(14.4) of Article XXVIII.

15.4 OWNER AND CONTRACTOR REPRESENTATIVES:

15.4.1 Notices to be provided under this Contract shall be given in writing either by hand delivery or by certified return receipt requested United States mail, to the following:

County Board of Commissioners:

Attn: *****

AND Procurement and Contracts Director
810 Pitkin Avenue
Glenwood Springs, CO 81601

Contractor: _____

OWNER:

BOARD OF COUNTY COMMISSIONERS
OF GARFIELD COUNTY, COLORADO

By _____
Authorized County Representative

Dated: _____

CONTRACTOR:

(Type or Print Name of Contractor)

By _____
(Type or Print Name)

Title: _____

Dated: _____

END OF AMENDMENT TO AIA DOCUMENT A201-1997

#1-County as Const. Manager