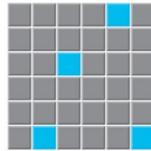


**CONTRACT DOCUMENTS
AND SPECIFICATIONS FOR**

SHELTER COVE SUBDIVISION

LOT 8 & 9 DRAINAGE PROJECT

September 2014



State of Utah
School & Institutional
Trust Lands Administration

2303 North Coral Canyon Boulevard, Ste. 100-A
Washington, Utah 84780

ALPHA ENGINEERING
43 South 100East
St. George UT 84770
(435) 628-6500

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PUBLIC NOTICE

October 2014

Advertisement of Bids

The State of Utah School and Institutional Trust Lands Administration (SITLA) is accepting bids for the Shelter Cove Subdivision Lot 8 & 9 Drainage Project electronically through bidsync only, until no later than 2:00 p.m. November 5, 2014.

The bid schedule includes construction of a storm water detention basin, approximately 250 cubic yards, installation of outlet works, rock armor lining, and storm drain piping. There will be a mandatory pre-bid meeting held beginning at the SITLA offices on November 3, 2014 at 10:00 a.m. Details of this RFP are described further on our website at www.trustlands.com and on www.bidsync.com. All bids must be submitted online at www.bidsync.com.

Copies of the Contract Documents may be examined and/or obtained at the Offices of Alpha Engineering, 43 South 100 East, Suite 100, St. George, Utah, 84770 after October 15, 2014. A fee of \$60.00 will be charged for plans, no part of which is refundable.

The State of Utah School and Institutional Trust Lands Administration reserves the right to reject any or all bids or waive any informality or technicality in the interest of the State of Utah School and Institutional Trust Lands Administration. SITLA Southwestern Area Office can be reached at (435) 652-2950.

Publish:

INFORMATION FOR BIDDERS

BIDS will be received by the State of Utah School and Institutional Trust Lands Administration (herein called the "OWNER"), electronically through bidsync only until 2:00 P.M., November 5, 2014.

All BIDS must be made on the required BID forms. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID forms must be fully completed and executed when submitted. Only one copy of the BID forms is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and

obtain the performance BOND and payment BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the Agreement and to complete the WORK contemplated therein. A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER as determined by the District using the criteria contained in District ordinances governing the award of contracts. The District reserves the option of selecting the lowest Bidder of the two bid schedules or may award separate contracts for each bid schedule.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout. Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

BID SCHEDULE

Proposal of _____ (hereinafter) called "BIDDER"), organized and existing under the laws of the State of Utah doing business as _____.*. To the State of Utah School and Institutional Trust Lands Administration (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of the Shelter Cove Subdivision Lot 8 & 9 Drainage Project in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within 30 consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$500.00 for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

*Insert "a corporation", "a partnership", or "an individual" as applicable.

SHELTER COVE SUBDIVISION LOT 8 & 9 DRAINAGE PROJECT

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit or lump sum prices.

NOTE: Payment to the Contractor: The Contractor is hereby advised that the final payment will be made within 30 days following the completion of all work specified.

NOTE: All bids shall be checked for mathematical errors by the Engineer. If errors have been made in the extension of the figures, it will be assumed that the unit prices are correct and the total amounts will be revised to reflect the corrections.

BID SCHEDULE

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE (Dollars & Cents)	TOTAL PRICE (Dollars & Cents)
1	Mobilization	1	L.S.		
2	Removals	1	L.S.		
3	Debris Basin Excavation (Cut & Fill)	1	L.S.		
4	18" Dia. HDPE Pipe	300	L.F.		
5	Re-Grade Barrow Ditch	260	L.F.		
6	Check Dams	4	Each		
7	Rock Lining at Culvert Outlet Locations	2	Each		
8	Asphalt Repair	300	S.F.		
TOTAL OF BID SCHEDULE					

ATTEST:

(Seal - If Bid is by Corporation)

RESPECTFULLY SUBMITTED:

Address

Signature

Name

Title

BID BOND

(Title 63, Chapter 56, Utah Code Annotated 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the STATE OF UTAH, hereinafter referred to as the "Obligee," in the amount of \$_____ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the _____ Project.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to the State of Utah as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety under this Bond shall be for a term of sixty (60) days from the actual date of the bid opening.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

DATED this _____ day of _____ .

Principal's name and address (if other than a corporation):

By: _____
Title: _____

Principal's name and address (if a corporation):

By: _____
Title: _____
(Affix Corporate Seal)

Surety's name and address:

By: _____
Attorney-in-Fact (Affix Corporate Seal)

STATE OF _____)
) ss.
COUNTY OF _____)
Seal)

On this _____ day of _____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____ .

My Commission Expires: _____
Resides at: _____

APPROVED AS TO FORM:
February 11, 1991,
by ALAN S. BACHMAN, ASSISTANT UTAH ATTORNEY GENERAL

NOTARY PUBLIC

Construction Agreement Documents

Notice of Award

Agreement Form

Construction Performance Bond

Construction Payment Bond

Notice to Proceed

Notice of Award

PROJECT IDENTIFICATION Shelter Cove Subdivision Drainage Project

OWNER SITLA
 2303 NORTH CORAL CANYON BOULEVARD
 WASHINGTON, UTAH 84780

CONTRACTOR

DATE

You are notified that your bid for the above named Contract has been considered. You are the apparent successful bidder and have been awarded the contract. The Contract Price of your Contract is _____.

Two (2) copies of the proposed Agreement and two complete copies of the Contract Documents accompany this notice. You must comply with the following conditions precedent within ten (10) calendar days of the date of this Notice of Award, which is by _____.

- X You must deliver to the OWNER two (2) fully executed counterparts of the Agreement.
- X You must deliver with the executed agreement the Contract Security (Bonds) and Certificates of Insurance as specified in the Instructions to Bidders, the General Conditions, and the Special Provisions.

Failure to comply with these conditions within the time specified will entitle the OWNER to consider your bid abandoned, to annul this Notice of Award, and to declare your Bid Security forfeited. Within fourteen (14) days after you comply with these conditions, the OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached. You are required to return an executed copy of the Acceptance of Notice of Award form attached to the OWNER.

SIGNED	
	Kyle Pasley, Deputy Assistant Director SITLA, Southwestern Area Office

ACCEPTANCE OF NOTICE OF AWARD

Acknowledged by:			
Title:		Date:	

Agreement Form

This AGREEMENT is made this _____ day of _____ 2014, by and between the State of Utah, School and Institutional Trust Lands Administration (“SILTA” or “Owner”), and _____, a Utah Corporation, (“CONTRACTOR”).

A. On September 2014, the Owner issued a request for bids for a Project referred to as “Shelter Cove Subdivision Drainage Project.” The work is described with specificity in the Contract Documents and Specifications and will be referred to generally as the “Project.” The Project consists of completion of a debris basin, and associated outlet works, installation of an 18” culvert, regarding of the barrow ditch, installation of rock armor in the barrow ditch, and four small check dams.

B. In its bid request, the Owner expressed its desire to complete above mentioned work.

C. The CONTRACTOR submitted the lowest, responsible bid in the amount of \$_____.

NOW THEREFORE, in consideration of the payments and agreements herein and other good and valuable consideration, the parties agree:

1. The CONTRACTOR will commence and complete Work comprising the Project, as set forth in the Contract Documents (the “Project”), including grading, constructing a park and landscaping streets and roundabout.
2. The CONTRACTOR agrees to perform the Work in return for payment from the Owner.
3. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT in strict compliance with the Contract Documents described herein, which are incorporated into this agreement and made a part of this contract, including any subsequent Addenda.
4. The CONTRACTOR will commence work required by the Contract Documents within seven (7) calendar days after the date of the NOTICE TO PROCEED. The CONTRACTOR shall complete the Work within four weeks after the date of the NOTICE TO PROCEED.
5. Fixed and Agreed Liquidated Damages: The CONTRACTOR agrees to five hundred (\$500.00) dollars per day for each calendar day delay in completing the work in accordance with the terms of the Contract Documents.
6. The term “CONTRACT DOCUMENTS” means and includes the following attached or referenced documents that are incorporated and made a part of this Agreement by reference. In the event that any provision of one Contract Document conflicts with the provision of another Contract Document, the provision in that document first listed below shall govern:

- A. State of Utah Contract / State of Utah Contract Amendments

- B. Change Order / Field Order
- C. Addenda to Contract Documents
- D. Agreement (this instrument)
- E. Remaining Legal and Procedural Documents
 - 1. Bid Proposal (including Bid Schedule), as amended
 - 2. Bid Information
 - 3. Advertisement for Bids
 - 4. Notice of Award, Notice to Proceed

F. Special Provisions

G. The following drawings prepared by Alpha Engineering:

- 1. Shelter Cove Drainage Project
- 2. {INSERT DRAWING INFO}
- 3. {INSERT DRAWING INFO}

H. Geotechnical Report prepared by entitled "N/A" dated N/A.

I. General Conditions

J. Supplemental Construction Specifications

K. Big Water/ Kane County Standard Specifications for Design and Construction

12. This AGREEMENT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3), each of which shall be deemed an original on the date first above written.

OWNER: State of Utah School and Institutional
Trust Lands Administration (SITLA)

By: _____
Kevin S. Carter
Director

(SEAL)

Attest:

Name: _____

Title: _____

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

NOTE: Witnesses not required for a Corporation, but the Corporate Certificate must be completed. Two Witnesses are required for Partnerships and Individuals. Partnerships must also complete Partnership Certificate.

CORPORATE CERTIFICATE

I,

Certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Agreement; that _____, who signed said Agreement on behalf of the CONTRACTOR was then _____, of the said Corporation by authority of its governing body and is within the scope of its corporate powers.

Dated: _____

SIGNATURE

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

State of Utah)
)ss
County of)

_____, being first duly sworn, deposes and says; that he/she is a member of the partnership firm designated as _____, and named in the Agreement. That he/she has been duly vested with authority to make and sign instruments for the partnership by _____, who constitute the other members of the partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____ 2014.

SIGNATURE

Construction Performance Bond

(Title 63, Chapter 56, Utah Code Annotated 1953, as Amended)

That _____ hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah, hereinafter referred to as the "Obligee," in the amount of _____ DOLLARS (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, to construct Shelter Cove Subdivision Lot 8 & 9 Drainage Project in the County of Kane, State of Utah, Project No. _____, for the approximate sum of Dollars (\$ _____), which Contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____ (Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____ (Seal)
Attorney-in-Fact

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company and that he/she is duly authorized to

execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____.

My commission expires: _____

Resides at: _____

NOTARY PUBLIC

Construction Payment Bond

(Title 63, Chapter 56, Utah Code Annotated 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____, a corporation organized and existing under the laws of the State of _____ authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of _____, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah hereinafter referred to as the "Obligee," in the amount of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, to construct Shelter Cove Subdivision Lot 8 & 9 Drainage Project in the County of Kane, State of Utah, Project No. _____ for the approximate sum of _____ Dollars (\$ _____), which contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, 1953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____ (Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____ (Seal)
Attorney-in-Fact

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____.

My commission expires: _____

Resides at: _____

NOTARY PUBLIC

PROJECT IDENTIFICATION Shelter Cove Subdivision Lot 8 & 9 Drainage Project
Big Water ,UT

OWNER SITLA
2303 North Coral Canyon Blvd., Ste. 100-A
Washington, Utah 84780

CONTRACTOR

DATE

DATE TO PROCEED

You are notified that the Contract Time under the above named Contract will commence to run on the above named Date to Proceed. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement Form, the date of substantial completion is _____, and the date of Final Completion is _____.

A preconstruction conference will be held on _____ at SITLA . At that time an executed set of Contract Documents will be delivered to you with additional copies of the Plans and Specifications for Construction.

You are required to return an acknowledged copy of this Notice to Proceed to the OWNER.

SIGNED	
	Kyle Pasley, Deputy Assistant Director SITLA, Southwestern Area Office

ACCEPTANCE OF NOTICE TO PROCEED

Acknowledged by:			
Title:		Date:	



Contract # _____

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:
Department Name: _____ Agency Code: _____ Division Name: _____, referred to as (STATE), and the following CONTRACTOR:

Name

Address

City State Zip

- LEGAL STATUS OF CONTRACTOR
- Sole Proprietor
 - Non-Profit Corporation
 - For-Profit Corporation
 - Partnership
 - Government Agency

Contact Person _____ Phone # _____ Email _____
Vendor # _____ Commodity Code # _____

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX# _____, FY _____, Bid# _____ or a pre-approved sole source authorization (from the Division of Purchasing) # SS _____.
4. CONTRACT PERIOD: Effective Date: _____ Termination Date: _____ unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): _____. All payments under this contract will be completed within 90 days after the Termination Date.
5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$ _____ for costs authorized by this contract. Additional information regarding costs: _____
6. ATTACHMENT A: State of Utah Standard Terms and Conditions [for goods]; or Terms and Conditions for Professional Services
ATTACHMENT B: Scope of Work
ATTACHMENT C: N/A
ATTACHMENT D: N/A
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # _____ dated _____.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.
CONTRACTOR **STATE**

Contractor's signature	Date	Agency's signature	Date
Type or Print Name and Title		Director, Division of Purchasing	Date
		Director, Division of Finance	

Agency Contact Person	Telephone Number	Fax Number	Email
-----------------------	------------------	------------	-------

ATTACHMENT B

CONSTRUCTION AGREEMENT

This CONSTRUCTION AGREEMENT (the "Agreement"), is made and entered into this _____ day of _____ 2014 ____, by and between the State of Utah, School and Institutional Trust Lands Administration ("SITLA"), and _____, a _____ [individual, corporation, limited liability company, other] ("Contractor").

A. SITLA desires Contractor to construct a [Debris Basin, install outlet works, install culvert, and grading of Barrow ditches] on certain real property in [Kane] County, Utah (the "Work").

B. Contractor agrees to perform the Work for the contract sum described herein.

NOW THEREFORE, in consideration of the payments and agreements herein and other good and valuable consideration, the parties agree:

ARTICLE 1. SCOPE OF WORK; INCORPORATED AGREEMENT.

The Work consists of the construction project, more particularly described in the Scope of Work as set forth in Exhibit "A". The Work shall be performed in accordance with those standards and specifications for such improvements as required by Big Water Town and as otherwise required by applicable law, and shall be in accordance with those plans and specifications for the Work provided in the Contract Documents. Contractor will furnish the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work. All Contract Documents as defined and described in the General Terms and Conditions are incorporated herein and made part of this Agreement. Contractor agrees to complete the Work as required in this Agreement. Contractor agrees that the Work shall be subject to the approval of SITLA.

ARTICLE 2. CONTRACT SUM.

[lump sum contract]SITLA agrees to pay and Contractor agrees to accept in full performance of this Agreement, a not to exceed sum of _____ AND NO/100 DOLLARS (\$_____.00) (the "Contract Sum") for the full and complete services included under the terms of this Agreement. The Contract Sum may be changed only by written authorization from SITLA in the form of a modification to this Agreement. SITLA shall pay the Contract Sum to Contractor as provided in Article 4 below and in the General Terms and Conditions.

[unit pricing contract]SITLA agrees to pay and Contractor agrees to accept in full performance of this Agreement, a not to exceed sum of _____ AND NO/100 DOLLARS (\$_____.00) (the "Contract Sum") for the full and complete services included under the terms of this Agreement. The amount paid under this Agreement shall be equal to those allowable costs and expenses actually incurred by Contractor, its subcontractors and consultants, in completing the Work, as set forth in the bid schedule attached hereto as Exhibit

“A” and the Contract Documents, provided that such amount shall not exceed \$_____.00. The Contract Sum may be changed only by written authorization from SITLA in the form of a modification to this Agreement. SITLA shall pay the Contract Sum to Contractor as provided in Article 4 below and in the General Terms and Conditions.

ARTICLE 3. TIME OF COMPLETION.

Contractor will be required to complete the Work on or before _____. Contractor shall complete the Work in such manner as to achieve any milestone identified in the Scope of Work. The Work is not complete until all required tests and inspections have been performed and all required approvals have been obtained.

[liquidated damages clause (optional)]Contractor agrees to pay liquidated damages in the amount of \$ 500.00 per calendar day for each calendar day beyond the contract time indicated in the Contract Documents. This provision for liquidated damages is (a) to compensate SITLA for delay only; (b) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Agreement; (c) is not a penalty; and (d) shall not prevent SITLA from maintaining claims for other non-delay damages, such as costs to complete or remedy defective Work as defined and described in the General Terms and Conditions.

No action shall be maintained by Contractor, including its subcontractors or suppliers, against SITLA, consultants to SITLA, or the State of Utah for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of SITLA or its officers, employees, consultants, or agents, except as expressly provided herein.

ARTICLE 4. PAYMENT.

SITLA may pay Contractor from time to time as the Work progresses, but not more than once each month and only for Work performed. Payment shall be made within thirty (30) days of SITLA’s receipt of Contractor’s submittal of an Application for Payment, as described in the General Terms and Conditions.

Five percent (5%) of any amount earned by Contractor may be retained from each payment. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with Utah Code Ann. §13-8-5, as amended. Contractor shall also comply with the requirements of Utah Code Ann. §13-8-5, as amended, including restrictions of retainage regarding subcontractors and the distribution of interest earned on the retention proceeds. SITLA shall not be responsible for enforcing any of Contractor’s obligations under Utah law regarding retention law requirements with subcontractors at any tier.

Final payment will be made upon final acceptance of the Work by SITLA and upon Contractor’s submission of the final Application for Payment. The acceptance by Contractor of final payment shall release SITLA from all claims and all liability to Contractor for fees and costs of the performance of the Work.

Except as otherwise provided by law, if any payment is more than sixty (60) days late, the Contractor shall be paid interest in an amount equal to the published Wall Street Journal prime

rate plus 2%. The published Wall Street Journal Prime Rate shall be determined by using such rate that is published closest to the 1st of the month for each month of the late period. The amount of any payment of interest shall be apportioned using such rate(s) for the late period.

ARTICLE 5. CHANGES IN WORK.

SITLA specifically reserves the right to modify or amend this Agreement, including without limitation, the Contract Sum and the time of completion, by enlarging or restricting the scope of Work. Any changes in the scope of Work shall be in form of a written modification of this Agreement or a change order.

ARTICLE 6. DOCUMENT OWNERSHIP.

All work product associated with the Work, including, without limitation, all drawings, reports, comments, manuals, calculations, forms, schedules, and all documents supplied to or produced by Contractor under this Agreement are the property of SITLA, whether the project for which they are made is begun or not. Such documents and the information contained therein are the exclusive property of SITLA, and Contractor shall not use them on any other projects with any other parties except with SITLA's advance written consent. All documents shall be delivered in a format reasonably acceptable to SITLA.

ARTICLE 7. INDEMNIFICATION.

Contractor agrees to indemnify, save harmless, and release SITLA and the State of Utah, and all their directors, officers, agents, volunteers, consultants, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the acts or negligence of the Contractor's officers, subconsultants, subcontractors, agents, volunteers, or employees, but not for claims arising from SITLA's or the State's sole negligence.

ARTICLE 8. RECORDS ADMINISTRATION.

Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor authorized by this Agreement. These records shall be retained by Contractor for at least four (4) years after the Agreement terminates, or until all audits initiated within the four (4) years, have been completed, whichever is later. Contractor agrees to allow Utah State and Federal auditors as well as SITLA access to all the records for this Agreement, for audit and inspection. Such access will be during normal business hours, or by appointment.

ARTICLE 9. INSURANCE.

Contractor shall maintain insurance in such amounts and with such requirements as set for in the General Terms and Conditions.

ARTICLE 10. PUBLIC INFORMATION.

Contractor agrees that this Agreement and related invoices will be public documents, and may be available for distribution. Contractor gives SITLA express permission to make copies of this Agreement and related invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

ARTICLE 11. SUCCESSORS AND ASSIGNMENT OF CONTRACT.

SITLA and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. Contractor shall not assign this Agreement without the prior written consent of SITLA, nor shall Contractor assign any moneys due or to become due as well as any rights under this Agreement, without prior written consent of SITLA.

ARTICLE 12. RELATIONSHIP OF THE PARTIES.

This Agreement is for the performance of services and not the sale of goods. Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind SITLA to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for SITLA, except as herein expressly set forth. The Contract Sum shall be the total amount payable to the Contractor by SITLA. Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from SITLA for the Work. Persons employed by SITLA and acting under the direction of SITLA shall not be deemed to be employees or agents of Contractor. Contractor and SITLA shall not be deemed partners or joint venturers, or to have any other business relationship except contracting parties.

ARTICLE 13. AUTHORITY TO EXECUTE AND PERFORM AGREEMENT.

Contractor represents that it is duly organized, validly existing and qualified to do business in the State of Utah. Contractor and SITLA each represent that the execution of this Agreement and the performance hereunder is within their respective duly authorized powers.

ARTICLE 14. CONFLICT OF INTEREST.

Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with Utah Code Ann. § 67-16-8, as amended.

ARTICLE 15. LAWS AND REGULATIONS.

Contractor and any and all supplies, services, equipment, and construction furnished under this Agreement will comply fully with all applicable Federal, Utah and municipal laws and regulations, including applicable licensure and certification requirements.

ARTICLE 16. FORCE MAJEURE.

Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, terrorism, acts of God, or war, which is beyond that party's reasonable control. SITLA may terminate this Agreement after determining such delay or default will reasonably prevent successful performance of this Agreement.

ARTICLE 17. SEVERABILITY.

A declaration by any court, or any other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement, unless the provisions are mutually dependent.

ARTICLE 18. ENTIRE AGREEMENT.

This Agreement, including all exhibits, attachments, and documents incorporated hereunder constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

ARTICLE 19. WAIVER.

No waiver by SITLA or by Contractor of any default hereunder shall constitute either a waiver of the same default at a later time or a waiver of a different default hereunder. The right of SITLA to review and comment upon the Work, as well as any approval by SITLA, shall not be construed as relieving Contractor from its legal responsibility for construction work required under this Agreement. No review, approval, acceptance, or payment for any of the Work shall be construed to operate as a waiver by SITLA of any right under this Agreement of any cause of action arising out of the performance or nonperformance of this Agreement, and Contractor shall be and remain liable to SITLA in accordance with applicable law for all damages to SITLA caused by Contractor's acts, errors, or omissions.

ARTICLE 20. AMENDMENT.

This Agreement may be amended, modified, or supplemented only by written amendment, executed by authorized persons of the parties hereto, and attached to the original signed copy of the Agreement.

ARTICLE 21. TERMINATION.

This Agreement may be terminated as provided for in the General Terms and Conditions.

ARTICLE 22. GOVERNING LAW, JURISDICTION, AND VENUE.

The provisions of this Agreement shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Agreement or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

ARTICLE 23. ATTORNEY FEES AND COSTS.

In the event of any dispute between the parties, each party shall be responsible for its own attorney fees, expenses, and costs incurred in any action to enforce this Agreement, except as otherwise expressly provided for in the Contract Documents or by applicable law.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three (3) copies, each of which shall be deemed an original on the date first above written.

OWNER: State of Utah School and Institutional
Trust Lands Administration (SITLA)

By: _____
Kevin S. Carter
Director

Approved as to form:

Michelle E. McConkie, Special Assistant
Attorney General

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

NOTE: Witnesses not required for a Corporation, but the Corporate Certificate must be completed. Two Witnesses are required for Partnerships and Individuals. Partnerships must also complete Partnership Certificate.

CORPORATE CERTIFICATE

I,

_____,
certify that I am the Secretary of the Corporation named as CONTRACTOR in the foregoing Agreement; that _____, who signed said Agreement on behalf of the CONTRACTOR was then _____, of the said Corporation by authority of its governing body and is within the scope of its corporate powers.

Dated: _____

SIGNATURE

(CORPORATE SEAL)

PARTNERSHIP CERTIFICATE

State of Utah)
)ss
County of)

_____, being first duly sworn, deposes and says; that he/she is a member of the partnership firm designated as _____, and named in the Agreement. That he/she has been duly vested with authority to make and sign instruments for the partnership by _____, who constitute the other members of the partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____ 2011.

SIGNATURE

Exhibit “A” to Attachment B

SCOPE OF WORK

Exhibit "B" to Attachment B

PRICING SCHEDULE

BID SCHEDULE

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE (Dollars & Cents)	TOTAL PRICE (Dollars & Cents)
1	Mobilization	1	L.S.		
2	Removals	1	L.S.		
3	Debris Basin Excavation (Cut & Fill)	1	L.S.		
4	18" Dia. HDPE Pipe	300	L.F.		
5	Re-Grade Barrow Ditch	260	L.F.		
6	Check Dams	4	Each		
7	Rock Lining at Culvert Outlet Locations	2	Each		
8	Asphalt Repair	300	S.F.		
TOTAL OF BID SCHEDULE					

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to other types of procurement processes, including but not limited to Invitation for Bids or to Multiple Stage Bids.

5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

5.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (1) Contractor; (2) Subcontractor at any tier; and/or (3) any entity or person for whom the Contractor or Subcontractor may be liable.
 2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-7, Utah Code, as amended.
 7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
 8. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence. The

parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.
10. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
11. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
12. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
13. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
14. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**
 - 14.1 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.
 - 14.2 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part, or have the services and purchase obligations of the State proportionately reduced, at the sole discretion of the State, if the State reasonably determines that a change in available funds affects the State's ability to pay under the contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
 - 14.3 If a notice is delivered under paragraph 1 or 2 of this Section 14 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," the State will reimburse the Contractor for products properly delivered or services properly performed up until the effective date of said notice. The State will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.
 - 14.4 Notwithstanding any other paragraph or provision of this Section 14 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if the State in said notice to the Contractor indicates that the Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the Contractor shall immediately cease such orders or commitments upon receipt of said notice and the State shall not be liable for any such orders or commitments made after the receipt of said notice.
15. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
16. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been

made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

17. **INSURANCE:** Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.
18. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
19. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
20. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
21. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
22. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Section 15-6-3. The IRS rate is adjusted quarterly, and is applied on a per annual basis, on the invoice amount that is overdue. All payments to the Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card).
23. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
24. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
25. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: (1) Nonperformance of contractual requirements; (2) A material breach of any term or condition of this contract. The State will issue a written notice of default providing a 10 day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: (1) Exercise any remedy provided by law; (2) Terminate this contract and any related contracts or portions thereof; (3) Impose liquidated damages, if liquidated damages are listed in the contract; (4) Suspend Contractor from receiving future solicitations.
26. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
27. **CONFIDENTIALITY:** Contractor, and anyone for whom the Contractor may be liable, must maintain the confidentiality of any non-public personal information. Personal information includes, but is not limited to, names, social security numbers, birth dates, address, credit card numbers and financial account numbers. The State reserves the right to identify additional reasonable types or categories of information that must be kept confidential by the Contractor and anyone for whom the Contractor may be liable. This duty of confidentiality shall be ongoing and survive the term of this contract.
28. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2404, Utah Code, as amended).

29. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (1) Attachment A: State of Utah Standard Terms and Conditions; (2) State of Utah Contract Signature Page(s); (3) State Additional Terms and Conditions; (4) Contractor Terms and Conditions.
30. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(Revision date: 21 May 2014)

General Conditions

- 1 Definitions
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- 3 Contract Documents: Intent,
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- 16 Dispute Resolution
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General Conditions

ARTICLE 1 - Definitions

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

1.1 *Addenda* - Written and graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.

1.2 *Agreement* - The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 *Application for payment* - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4 *Asbestos* - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.5 *Bid* - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.6 *Bidding Documents* - The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids.)

1.7 *Bidding Requirements* - The advertisement or invitation to bid, instructions to bidders, and the Bid form.

1.8 *Bonds* - Performance and Payment bonds and other instruments of security.

1.9 *Change Order* - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date.

1.10 *Contract Documents* - The Agreement, Addenda (which pertain to the Contract Documents),

CONTRACTOR'S Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specially identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER'S written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

1.11 *Contract Price* - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

1.12 *Contract Times* - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the work so that it is ready for final payment as evidenced by ENGINEER'S written recommendation of final payment in accordance with paragraph 14.13.

1.13 *CONTRACTOR* - The person, firm or corporation with whom OWNER has entered into the Agreement.

1.14 *Defective* - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred in the Contract Documents, or has been damaged prior to ENGINEER'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

1.15 *Drawings* - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

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

1.17 *ENGINEER* - The person, firm or corporation named as such in the Agreement.

1.18 *ENGINEER'S Consultant* - A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER'S independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.19 *Field Order* - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

1.20 *General Requirements* - Section 0000 through Section 5000 of the Specifications.

1.21 *Hazardous Waste* - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.22 *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.23 *Liens* - Liens, charges, security interests or encumbrances upon real property or personal property.

1.24 *Milestone* - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

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

1.26 *Notice to Proceed* - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.27 *OWNER* - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28 *Partial Utilization* - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29 *PCBs* - Polychlorinated biphenyls.

1.30 *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

1.31 *Project* - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.32 *Radioactive Material* - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (USC Section 2011 et seq.) as amended from time to time.

1.33 *Resident Project Representative* - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34 *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.35 *Shop Drawings* - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

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

1.37 *Subcontractor* - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.38 *Substantial Completion* - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER'S definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purpose for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER'S written recommendation of final payment in accordance with

paragraph 14.13. The terms “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

1.39 *Supplementary Conditions* - The part of the Contract Documents which amends or supplements these General Conditions.

1.40 *Supplier* - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.41 *Underground Facilities* - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42 *Unit Price Work* - Work to be paid for on the basis of unit prices.

1.43 *Work* - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44 *Work Change Directive* - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45 *Written Amendment* - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering

or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - Preliminary Matters

2.1 Delivery of Bonds: When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

2.2 Copies of Documents: OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Times; Notice to Proceed: The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.4 Starting the Work: CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

2.5 Before Starting Construction: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6 Submission of Schedules Before Starting Construction: Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7 Certificates of Insurance: Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

2.8 Preconstruction Conference: Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

2.9 Initially Acceptable Schedules: Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and in the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR

from CONTRACTOR'S full responsibility therefore. CONTRACTOR'S schedule of Shop Drawings and Sample submissions will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals. CONTRACTOR'S schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3 - Contract Documents: Intent, Amending, Reuse

3.1 Intent: The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for one is binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 All Work, Materials or Equipment Inferred to Complete Project Included: It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3 Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2 If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents or between the Contract Documents

and any provisions of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1 The provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.3.2 The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER'S Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4 Use of Certain Terms to Determine Compliance with Contract Documents: Whenever in the Contract Documents the terms "as ordered," "as directed," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement,

direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.5 Amending Contract Documents: The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.5.1 A formal Written Amendment,

3.5.2 A Change Order (pursuant to paragraph 10.4), or

3.5.3 A Work Change Directive (pursuant to paragraph 10.1)

3.6 Supplementing Contract Documents: In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.6.1 A Field Order (pursuant to paragraph 9.5),

3.6.2 ENGINEER'S approval of a Shop Drawing or Sample (pursuant to paragraph 6.26 and 6.27), or

3.6.3 ENGINEER'S written interpretation or clarification (pursuant to paragraph 9.4).

3.7 Reuse of Documents: CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER'S Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adoption by ENGINEER.

ARTICLE 4 - Availability of Lands; Subsurface and Physical Conditions; Reference Points

4.1 Availability of Lands: OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER'S interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER'S furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Subsurface and Physical Conditions:

4.2.1 Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

4.2.1.1 Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and

4.2.1.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2 Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data"

contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions, but is not incorporated into said Supplemental Conditions. CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER'S Consultants with respect to:

4.2.2.1 the completeness of such reports and drawings for CONTRACTOR'S purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.2.2.3 any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3 Notice of Differing Subsurface or Physical Conditions: IF CONTRACTOR believes that any subsurface or physical conditions at or contiguous to the site that is uncovered or revealed either:

4.2.3.1 is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2 is of such a nature as to require a change in the Contract Documents, or

4.2.3.3 differs materially from that shown or indicated in the Contract Documents, or

4.2.3.4 is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such

conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4 ENGINEER'S Review: Following CONTRACTOR's written notice to OWNER of differing subsurface or physical conditions, ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER'S obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER'S findings and conclusions.

4.2.5 Possible Contract Documents Change: If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6 Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR'S cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1 such condition must meet any one or more of the categories described in paragraph 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2 a change in the Contract Documents pursuant to paragraph 4.2.5 will not be automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3 with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and

4.2.6.4 CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;

4.2.6.4.1 CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or

4.2.6.4.2 the existence of such condition could reasonably have been discovered or revealed

as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR'S making such final commitment; or

4.2.6.4.3 CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

IF OWNER and CONTRACTOR are unable to agree on entitlement to or as the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefore as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER'S Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3 Physical Conditions-Underground Facilities:

4.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2 The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in

connection therewith (except in an emergency as required by Paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER'S Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.4 Reference Points: OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the

site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2 CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefore as provided in Articles 11 and 12.

4.5.3 If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4 To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees, agents, other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is

attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5 The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 - Bonds and Insurance

5.1 Performance, Payment and Other Bonds:

CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2 Bankrupt or Insolvent Surety: If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER and shall comply with those requirements in paragraph 5.3.1.

5.3 Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from

surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2 CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

5.4 CONTRACTOR'S Liability Insurance:

CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance and furnishing of the Work and CONTRACTOR'S other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.4.1 claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2 claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees;

5.4.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR'S employees;

5.4.4 claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5.4.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and

5.4.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7 with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insured's (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insured's, and include coverage for the respective officers and employees of all such additional insured's;

5.4.8 include the specific coverage and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

5.4.9 include completed operations insurance;

5.4.10 include contractual liability insurance covering CONTRACTOR'S indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;

5.4.11 contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12 remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing *defective* Work in accordance with paragraph 13.12, and

5.4.13 with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a

certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.5 OWNER'S Liability Insurance: In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER'S option, may purchase and maintain at OWNER'S expense OWNER'S own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.6 Property Insurance: Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

5.6.1 include the interest of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

5.6.2 be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary building, false work and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

5.6.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

5.6.4 cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

5.6.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional

insured to whom a certificate of insurance has been issued.

5.7 Additional Insurance: CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8 No Cancellation of Insurance Without Notice: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued.

5.9 No Owner-Purchased Insurance; Risk of Loss: OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interest of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10 Receipt and Application of Insurance Proceeds: Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.11 Adjustment and Settlement with Insurers: OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection

be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.12. Acceptance of Bonds and Insurance; Option to Replace: If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.13 Partial Utilization - Property Insurance: If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers provided the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S Responsibilities

6.1 Supervision and Superintendence: CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible

for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2 Resident Superintendent: CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

6.3 Labor, Materials and Equipment: CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to ENGINEER.

6.4 Contractor to Provide All Materials and Services: Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 Quality of Materials and Equipment: All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.6 Progress Schedule: CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time:

6.6.1 CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustment will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.6.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7 Substitutes and "Or-Equal" Items:

6.7.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:

6.7.1.1 "Or-Equal": If in ENGINEER'S sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER'S sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2 Substitute Items: If in ENGINEER'S sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material

or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. IF CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3 CONTRACTOR'S Expense: All data to be provided by CONTRACTOR in support of any proposed "or equal" or substitute item will be at CONTRACTOR'S expense.

6.7.2 Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique,

sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER'S sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3 Engineer's Evaluation: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraph 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized without ENGINEER'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any "or equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER'S Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER'S Consultants for evaluating each such proposed substitute item.

6.8 Concerning Subcontractors, Suppliers and Others:

6.8.1 CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9 CONTRACTOR Responsible for Acts of Subcontractors and Suppliers:

6.9.1 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all

Subcontractors, Suppliers and such other persons and organization performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

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

6.11 CONTRACTOR and Subcontractor Agreements: All work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which Specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER'S Consultants and all other additional insured's for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.12 Patent Fees and Royalties: CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, designs, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

6.13 Permits: Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspections fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.14 Laws and Regulations:

6.14.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR'S compliance with any Laws or Regulations.

6.14.2 If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR or CONTRACTOR'S obligations under paragraph 3.3.2.

6.15 Taxes: CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.16 Use of Premises: CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the

performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal, or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR'S performance of the Work.

6.17 Site Free From Waste: During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.19 Record Documents: CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

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

6.20.1 all persons on the Work site or who may be affected by the Work;

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER'S Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR'S duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21 Safety Representative: CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.22 Hazard Communication Programs: CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

6.23 Emergencies: In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24 Shop Drawings and Samples:

6.24.1 CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2 CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purpose required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25 Submittal Procedures:

6.25.1 Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

6.25.1.1 all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,

6.25.1.2 all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3 all information relative to CONTRACTOR'S sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2 Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S obligations under the Contract Documents with respect to CONTRACTOR'S review and approval of that submittal.

6.25.3 At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawings or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26 ENGINEER to Approve Shop Drawings and Samples: ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER'S review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER'S review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by

ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 CONTRACTOR to Follow Contract Documents: ENGINEER'S review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28 Work at Expense of Contractor: Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER'S review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

6.29 Continuing the Work: CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30 CONTRACTOR'S General Warranty and Guarantee:

6.30.1 CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER'S Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR'S warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2 normal wear and tear under normal usage.

6.30.2 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following

will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents:

- 6.30.2.1 observations by ENGINEER;
- 6.30.2.2 recommendation of any progress or final payment by ENGINEER;
- 6.30.2.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- 6.30.2.4 use or occupancy of the Work or any part thereof by OWNER;
- 6.30.2.5 any acceptance by OWNER or any failure to do so;
- 6.30.2.6 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;
- 6.30.2.7 any inspection, test or approval by others; or
- 6.30.2.8 any correction of *defective* Work by OWNER.

6.31 Indemnification: To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32 No Limitations on Damages: In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33 Limits on CONTRACTOR'S Indemnification: The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER'S Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

6.34 Survival of Obligations: All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7 - Other Work

7.1 Related Work at Site: OWNER may perform other work related to the Project at the site by OWNER'S own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2 Access: CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly

connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3 Inspection of Work: If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other Work.

7.4 Coordination: If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions.

7.4.1 the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2 the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3 the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 - OWNER's Responsibilities

8.1 Communication: Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 Termination of ENGINEER: In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3 Data and Payments: OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4 Surveys, Easements and Reports: OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4 Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5 Insurance: OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6 Change Orders: OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7 Inspections: OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8 Right to Stop Work or Terminate Services: In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9 Authority over Method of Work: The OWNER shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.10 Hazardous Substances: OWNER'S responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site set forth in paragraph 4.5.

8.11 Financial Obligations: If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER's Status During Construction

9.1 OWNER's Representative: ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

9.2 Visits to Site: ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against *defective* Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

9.3 Project Representative: If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident

Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

9.4 Clarifications and Interpretations: ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

9.5 Authorized Variations in Work: ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve and adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies and adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

9.6 Rejecting Defective Work: ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be *defective*, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9. whether or not the Work is fabricated, installed or completed.

9.7 Shop Drawings, Change Orders and Payments: In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8 ENGINEER and Change Orders: In connection with ENGINEER's authority as to Change Orders, see Articles 10,11, and 12.

9.9 ENGINEER and Application for Payment: In connection with ENGINEER's authority as to Application for Payment, see Article 14.

9.10 Determinations for Unit Prices: ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

9.11 Limitations on ENGINEER's Authority and Responsibilities:

9.11.1 Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.11.2 ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures or construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and

Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.11.3 ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4 ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5 The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

ARTICLE 10 - Changes in the Work

10.1 Revisions to Work: Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2 No Increase in Contract Price or Contract Times: CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.3 Change Orders: OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by

ENGINEER (or Written Amendments) covering:

10.3.1 changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of *defective* Work under paragraph 13.13 or correcting *defective* Work under paragraph 13.14, or (iii) agreed to by the parties:

10.3.2 changes in the Contract Price or Contract Times which are agreed to by the parties; and

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.4 Bond: If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - Change of Contract Price

11.1 Total Compensation: The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2 Change Only by Change Order or Written Amendment: The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be

determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3 Value of Work: The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2 where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.);

11.3.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determine as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

11.4 Cost of the Work: The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payrolls taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays,

shall be included in the above to the extent authorized by OWNER.

11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

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

11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented

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

11.4.5.4 Sales, consumers, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6 Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

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

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

11.5 Costs Not Included in Cost of Work: The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4-all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of *defective* Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6 CONTRACTOR's Fee: The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or

11.6.2 if a fixed fee is not agreed upon, than a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraph 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.5 the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

11.6.2.6 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7 Records: Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.8 Cash Allowances: It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1 the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances

to be delivered at the site, and all applicable taxes; and

11.8.2 CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9 Unit Price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of the Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3 OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1 the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

11.9.3.2 there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3 if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price

and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - Change of Contract Times

12.1 Change in Milestones: The Contract Times (or Milestones) may only be changed by a Change Order or Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event.

12.2 Time of Essence: All times limits stated in the Contract Documents are of the essence of the Agreement.

12.3 Delays Beyond Control of CONTRACTOR: Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4 Extension of Contract Time Sole Remedy: Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the

control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

ARTICLE 13 - Tests and Inspections; Correction, Removal or Acceptance of Defective Work

13.1 Notice of Defects: Prompt notice of all *defective* Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

13.2 Access to Work: OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections: CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.4 Tests and Inspections: OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1 for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2 that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3 as otherwise specifically provided in the Contract Documents.

13.5 Required Inspections by Public Body: If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith,

and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, test or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6 ENGINEER Concurrence: If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

13.7 Expense of Uncovering Work When No ENGINEER Concurrence: Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.8 Uncovering Work: If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9 Costs of Uncovering Work When ENGINEER Deems Necessary: If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim thereof as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

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

13.11 Correction or Removal of Defective Work: If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12 Correction Period:

13.12.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work or others) will be paid by CONTRACTOR.

13.12.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by

Written Amendment.

13.12.3 Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

13.13 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendations, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.14 OWNER May Correct Defective Work: If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to

exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - Payments to Contractor and Completion

14.1 Schedule of Values: The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.2 Application for Progress Payment: At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, of all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

14.3 CONTRACTOR's Warranty of Title: CONTRACTOR warrants and guarantees that title to all Work, materials and

equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.4 Review of Applications for Progress Payment: ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 Recommendation of Payment by ENGINEER: ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

14.5.1 the Work has progressed to the point indicated,

14.5.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

14.5.3 the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle

CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6ENGINEER Not Responsible for Methods of CONTRACTOR: ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with Contract Documents. ENGINEER is responsible for its own negligence in performing its duties hereunder.

14.7Refusal to Recommend of Make Payment: ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1 the Work is *defective*, or completed Work has been damaged requiring correction or replacement,

14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3 OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4 ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5 claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work,

14.7.6 Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens,

14.7.7 there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8 OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

14.8Substantial Completion: When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9Right to Exclude After Substantial Completion: OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but

OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.10 Partial Utilization: Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing the CONTRACTOR considers any such part of the Work is ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

14.11 Final Inspection: Upon written notice from CONTRACTOR that the entire Work or an agreed upon portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or *defective*. CONTRACTOR shall immediately take such

measures as are necessary to complete such Work or remedy such deficiencies.

14.12 Final Application for Payment: After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR by furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

14.13 Final Payment and Acceptance: If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14 Delay When Through No Fault of CONTRACTOR: If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.15 Waiver of Claims: The making and acceptance of final payment will constitute:

14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from *defective* Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - Suspension of Work and Termination

15.1 OWNER May Suspend Work: At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

15.2 OWNER Termination for Cause: Upon the occurrence

of any one or more of the following events:

15.2.1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.3 if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any), seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3 Termination Does Not Affect Rights of Remedies of OWNER: Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4OWNER's Termination Without Cause: Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2 for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3 for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4 for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.5CONTRACTOR May Stop Work or Terminate: If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than 90 days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven day's written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage

directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - Dispute Resolution

If and to the extent that OWNER and CONTRACTOR have agreed on a method and procedure for resolving disputes between them that may arise under this agreement, such dispute resolution method and procedure, if any, shall be as set forth in paragraphs 16.1 through 16.7 below. If no such agreement on the method or procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

16.1Arbitration: All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2Demand For Arbitration: Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.3Persons and Entities Not Included in Arbitration: Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is

not a party to this contract unless:

16.3.1 the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.3.2 such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.3.3 the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.4 Subcontractors: Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER, or ENGINEER's Consultants that does not otherwise exist.

16.5 Award Final: The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.6 Mediation: The parties may agree to first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by the American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute

submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

ARTICLE 17 - Miscellaneous

17.1 Giving Notice: Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage pre paid, to the last business address known to the giver of the notice.

17.2 Computation of Times:

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

17.2.2 A calendar day of twenty four hours measured from midnight to the next midnight will constitute a day.

17.3 Notice of Claim: Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's, employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

17.4 Cumulative Remedies: The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3, and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with

each particular duty, obligation, right and remedy to which they apply.

17.5 Professional Fees and Court Costs Included:

Whenever reference is made to “claims, costs, losses and damages,” it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

PART B

TECHNICAL SPECIFICATIONS

SECTION 101

GENERAL REQUIREMENTS

1.1 SUMMARY OF THE WORK. The contract will consist of the grading of a small detention basin, installation of erosion control, installation of storm drain pipe, and other miscellaneous appurtenances including installation of riprap and environmental controls.

1.2 CONTRACT TIME. The Contractor will be required to complete the contract within 30 calendar days from the Notice to Proceed. In the event the contractor(s) do not meet the above time schedule liquidated damages of \$500.00 per calendar day for each calendar day used beyond the contract time indicated will be assessed.

1.3 CONSTRUCTION STAKING. The Engineer will provide information to the contractor to establish the location of the finish grade of the project area by the following procedure:

- Rough grade staking. Set stakes at critical points.
- Redheads (subgrade). Set stakes at critical points.

The slope stakes will serve as the contract limit line of the project. The Contractor is required to perform all work within the confines of the slope stakes to preserve the natural conditions outside the slope stakes. The contractor is responsible to recondition, replace or refurbish any disturbed portion outside the contract limit line to the approval of the Owner and Engineer.

The contractor shall notify the Engineer at least two days in advance of where work will take place so that proper location stakes can be provided. The Contractor will be responsible to pay for any re-staking needed to be performed due to **neglect** of the Contractor.

1.4 SAFETY AND HEALTH. The contractor shall comply with, and is responsible for enforcement of safety and health regulations for construction, promulgated by the Secretary of Labor under Section 107 of the Contract Hours and Safety Standards Act, as set forth in Title 29, C.F.R.

Copies of these regulations may be obtained from the Labor Building, 14th and Constitution Avenue NW, Washington, DC 20013.

The contractor shall also comply with the provisions of the Federal Occupational Safety and Health Act as amended.

1.5 REFERENCES. Abbreviations used in this specification for various societies, organizations, or government bodies shall stand for the following:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ANSI	American National Standards Institute

ASTM	American Society for Testing and Materials
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction
AIISI	American Iron and Steel Institute
APA	American Plywood Association
AWWA	American Water Works Association
AWS	American Welding Society
DBF	Guide for the Development of Bicycle Facilities
FHA	Federal Housing Authority
ICBO	International Conference of Building Officials
NEC	National Electric Code
NEMA	National Electrical Manufacturers' Association
NWWDA	National Wood Window & Door Association
RAAC	Recreation Access Advisory Committee
UL	Underwriter's Laboratory
UBC	Uniform Building Code

1.6 QUANTITIES AND PAYMENT. The amount of work to be done, and materials or services to be furnished under the Contract as noted in the proposal, are estimates and are not to be taken as an expressed or implied statement that the actual amount of work or materials will correspond to the estimate. In the event the total amount of the lowest acceptable bid exceeds the amount of funds available for the project, the scope of work will be modified as determined by the Owner and Engineer.

The right is reserved to increase or decrease or to entirely eliminate certain items from the work or materials if found desirable or expedient, and the Contractor is cautioned against unbalancing his bid by prorating his overhead into one or two items only when there are a number of items on the proposal. The overhead and indirect charges should be prorated on all items in the proposal.

The Contractor will be allowed no claims for anticipated profits, loss of profits, or for damages because of any difference between the estimated and the actual amount of work done, or materials furnished or used in the completed project.

Other items of work defined in the specifications, but not listed in the Bid Schedule, shall be considered incidental to one or more of the items listed in the Bid Schedule and shall be paid for under the bid item listed to which it is related, as determined by the Engineer.

1.7 SITE EXAMINATION. The bidder should examine the site before submitting his proposal and inform himself regarding existing facilities and conditions affecting the proposed work. Failure to make such inspection shall in no way relieve the Contractor of any of the obligations or conditions of the specifications and special provisions or serve in any way as a basis of extra remuneration to the Contractor for conditions arising from unfamiliarity with the site or conditions affecting the work.

1.8 CONSTRUCTION TESTING. Alpha Engineering will secure, employ, record and produce documentation of compaction and material testing in all grading work according to Big Water Town Standards. The Contractor will coordinate all compaction and material testing

in all grading work. The facility is not considered acceptable, nor compensation granted until this documentation is conveyed to the Owner and Engineer.

SECTION 102

PROJECT MEETINGS

1.1 PRECONSTRUCTION CONFERENCE. A preconstruction conference between Engineer, Owner's representative, and Contractor shall be held at the site, or coordinated location prior to commencement of the Work.

- (a) This meeting shall be for the purpose of -
 - (1) Resolving current problems,
 - (2) Further orienting Contractor to requirements of the Contract Documents,
 - (3) Informing Contractor of Engineer's responsibility to Owner for inspection,
 - (4) Working out with Contractor a general schedule of inspection.

1.2 PROGRESS MEETINGS. Engineer and Owner's representative will hold periodic job site meetings.

- (a) Contractor shall attend such meetings and shall require subcontractors to attend as necessary.
- (b) These meetings are for the purpose of -
 - (1) Insuring that all activities are being coordinated properly on project,
 - (2) To assist in staying on schedule.
 - (3) Checking Status of -
 - (a) Submittals,
 - (b) Changes,
 - (c) Progress payments,
 - (d) Other matters will be reviewed.

SECTION 103

SUBMITTALS

1.1 SUBMITTALS. Deliver submittals to the Engineer unless indicated otherwise. Accompany each submittal with a letter of transmittal indicating:

- (a) Title of Project
- (b) Name of Contractor
- (c) Title of Submittal

1.2 PROGRESS SCHEDULE. Immediately after being awarded the Contract, prepare and submit for review an estimated progress schedule for the Work. Progress schedule shall be in sufficient detail to include but not be limited to:

- (a) Significant elements of the Work.
- (b) Time frame for each element of work with a beginning and ending point.
- (c) Percentage of progress of work placed or to be placed in a monthly period of time.
- (d) Value of the elements of work and relationship of elements of work one to the other for the total work under the Contract.

Progress schedule shall be updated monthly and submitted with each periodic estimate for partial pay, and shall show the original progress schedule or revised progress schedule one entry for each item of work as follows:

- (a) Progress of work placed prior to period of partial payment then being requested.
- (b) Progress during period of partial payment being requested.
- (c) Remaining work to be done by each item of work and for total work remaining under the Contract.

1.3 SUBMITTAL SCHEDULE.

Contractor shall, within ten (10) calendar days after receipt of Notice to Proceed, furnish a submittal schedule listing all items that will be furnished for review to Owner and Engineer.

- (a) This schedule shall include, among other things, shop drawings, Manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

- (b) Schedule shall indicate type of item, contract requirement reference, Contractor's scheduled dates for submitting the items, and projected need dates for review answers from Engineer. Schedule shall show a minimum of seven (7) calendar days after receipt for review by Engineer. If resubmittal is required, an additional five- (5) days will be allowed for after receipt. Contractor shall revise and/or up-date this schedule as appropriate and submit it with each payment estimate until all items have been submitted and reviewed.
- (c) Submittal schedule shall be coordinated with progress schedule for all the Work. Contractor shall revise and/or up-date the schedule to insure consistency with the progress schedule as it may be revised and/or updated. Such revised submittal schedules shall be promptly provided.
- (d) Furnishing of the submittal schedule or revision thereto shall not be interpreted as relieving Contractor of his obligation to comply with all the Specification requirements for items on the schedule.

Progress schedule shall be updated monthly and submitted with each periodic estimate for partial pay, and shall show the original progress schedule or revised progress schedule one entry for each item of work as follows:

- (a) Progress of work placed prior to period of partial payment then being requested.
- (b) Progress during period of partial payment being requested.
- (c) Remaining work to be done by each item of work and for total work remaining under the Contract.

1.4 PROGRESS REPORTS.

Contractor shall prepare daily reports of his operations and forward them to Engineer on at least a weekly basis. The daily report will contain at least the following information:

- (a) Weather conditions,
- (b) Manpower on the job in each trade,
- (c) Major items of equipment on the job,
- (d) A brief summary of work accomplished that day,
- (e) Materials, equipment, or Owner-furnished items arriving or leaving site,
- (f) Significant events,
- (g) Any tests made and their result if known,

- (h) Any oral instructions received,
- (i) Visitors to the job.

Contractor shall maintain a file of copies of all daily reports on the site and make it available to Engineer or Owner upon request.

1.5 SHOP DRAWINGS, PRODUCT DATA, & SAMPLES.

Definitions.

- (a) Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data, which are prepared by Contractor or any subcontractor, manufacturer, supplier, or distributor. Shop drawings illustrate some portion of the Work and confirm dimensions and conformance to Contract Documents.
 - (1) Shop drawings are not a part of the Contract Documents.
- (b) Samples are physical examples furnished by Contractor to illustrate materials, equipment, color, or workmanship and to assist in the establishment of standards by which the Work will be judged.

Procedure.

- (a) Contractor shall review and designate (stamp) his approval and submit to Engineer, with reasonable promptness and in orderly sequence, all shop drawings and samples required by the Contract Documents.
 - (1) Divisions and Sections of the Project Manual requiring submission of shop drawings to Engineer are as follows. If a broadscope Section heading is given, all of the subsections in that Section are to submit shop drawings.
 - (a) All submissions required by Section 629.
 - (2) Shop drawings and samples not required by the Contract Documents but requested by Contractor or supplied by those under contract to him need not be submitted to Engineer for approval unless specifically requested. These shop drawings shall meet all specified shop drawing requirements except those relating to submission to Engineer.
- (b) Shop drawings and samples shall be properly identified as specified or as Engineer may require.
- (c) Contractor shall reject shop drawings not in conformance with the Contract Documents.
- (d) Shop drawings shall be complete and detailed. If reviewed by Engineer, each copy of the shop drawings will be identified as having received such approval by being so

stamped and dated. If review "with exception" or "as noted" by Engineer is so identified, stamped, and dated, Contractor shall comply with notations shown. If such qualified review is shown or if Engineer does not review the shop drawings or if resubmission is so directed, Contractor shall make any corrections required or indicated by Engineer at Contractor's expense.

- (1) Any shop drawing or correction indicated on a shop drawing which does not conform to the Contract Documents shall be submitted as a change order and approved, as required under Section 14, of the General Conditions, prior to performing the changed work.
- (2) Number of copies of shop drawings and other submittals required will be established at the Pre-construction Conference if more than three are required. Contractor shall bear cost of reproducing copies of shop drawings required by all concerned. In lieu of prints, a sepia may be required.

By approving shop drawings and samples, Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that he has checked and coordinated each shop drawing and sample with requirements of the Work and of the Contract Documents.

No work requiring a shop drawing or sample submission shall be commenced until submission has been approved by Engineer.

Samples.

- (a) Where specified or required, Contractor shall submit samples to Engineer together with specification material, affidavits, and other documentation as may be required by Engineer.
- (b) It is Contractor's specific responsibility to ascertain that samples submitted have been checked and approved by him.
- (c) Cost of samples, together with transportation, delivery, and any other costs, shall be borne by Contractor. Samples shall be submitted in duplicate and one of each sample shall be retained in the office of Engineer until completion of the Project.
- (d) Where samples are specifically required to be submitted for approval, no work involving the sampled materials shall proceed until written approval has been obtained from Engineer.

Review By Engineer.

- (a) Review of shop drawings by Engineer shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory. Review of such drawings will not relieve Contractor of responsibility

for any error that may exist in the submittals.

1.6 SCHEDULE OF VALUES. A schedule of dollar values shall be submitted to Engineer and Owner not less than twenty (20) days prior to first request for payment and shall be a condition precedent to processing first payment. Schedule of values shall be submitted on Owner's standard payment request form. This breakdown shall follow the trade Divisions of the Specification and each item thereunder shall include its pro rata part of overhead and profit so the sum of the items will equal the contract price. Breakdown will correspond exactly to items of work in the progress schedule including work of subcontractors.

SECTION 104

MATERIAL & EQUIPMENT

1.1 MATERIAL & EQUIPMENT. Materials incorporated into Project shall be new, except as otherwise indicated in the Specifications, of specified quality, and furnished in sufficient quantity to facilitate proper and speedy execution of the Work.

Contractor shall, if required, furnish evidence of the quality of any materials.

Materials not meeting requirements of the Contract Documents shall be removed from Project by Contractor without expense to Owner.

1.2 DELIVERY, STORAGE, & HANDLING. Materials shall be delivered to the site in original packaging with labels and trademarks intact, and such labels and trademarks shall remain intact until used.

Contractor shall confine his apparatus, storage of materials, and operations of his workmen to limits indicated by law, ordinances, and permits and shall arrange and maintain parking of vehicles and storage of materials in an orderly manner leaving all walks, driveways, roads, and entrances, unencumbered.

All equipment on site shall be protected from physical damage and from the elements by measures satisfactory to Engineer. All rotating equipment shall be rotated four turns once each week during construction.

1.3 PRODUCT OPTIONS & SUBSTITUTIONS. When several materials are specified in the Contract Documents by name for one use, Contractor may select any one of those so specified. The mixing of several products specified by name for one use is prohibited.

Wherever an item or class of material is specified exclusively by trade name, name of maker, or by catalog reference, use such item only unless Engineer's approval for a substitution is secured by Addendum a minimum of 10 days before bid opening time. Items and material not specified in the Contract Documents and installed in the Work shall be removed and replaced by specified items and material at no additional cost to Owner and for no additional time added to Contract.

Wherever words "Approved by", "Satisfactory to", "submitted to", "inspected by," or similar phrases are used in this Specification, they shall be understood to mean that the material or item referred to shall be approved by, be satisfactory to, submitted to, or inspected by Engineer.

SECTION 105

CONTRACT CLOSEOUT

1.1 FINAL CLEANING. Contractor shall, at completion of work, remove all rubbish from under and about the Construction Site.

If Contractor fails to clean up, Owner may do so and the cost thereof will be charged to the Contractor.

1.2 SUBSTANTIAL COMPLETION, & FINAL INSPECTIONS.

Substantial Completion Inspection.

- (a) At the substantial completion inspection, unless work is rejected, Owner, Engineer, and Contractor will execute a Certificate of Substantial Completion, which states the dates for
 - (1) Commencement of warranties,
 - (2) Final completion inspection,
 - (3) Modifications to the amount assessed for liquidated damages.
- (b) After inspection, Engineer will furnish final list of items to be corrected.

Final Inspection.

- (a) Final Completion Inspection will ensure that all deficiencies noted at the substantial completion inspection have been corrected according to terms of the substantial completion certificate.
- (b) The contractor shall obtain signed non-conditional release waivers from all suppliers and subcontractors before final payment will be authorized.
- (c) When all items have been corrected, Engineer will issue a certificate authorizing final payment.
- (d) If all items have not been corrected as agreed, Owner may elect to complete the Work under provisions of Section 16 of the General Conditions.

1.3 PROJECT RECORD DOCUMENTS. Contractor shall deliver to Engineer prior to substantial completion inspection:

- (a) Accurate "as built" drawings and letters of the work if the work is constructed in any

way at variance to that shown on Contract Documents. "As built" drawings or descriptive letters for other work will be supplied if requested.

- (b) Certificates of inspection and of occupancy that may be required by authorities having jurisdiction over the Work.

1.4 OPERATING & MAINTENANCE DATA. Before execution of the Certificate of Substantial Completion, Contractor shall furnish the operating instructions and maintenance manuals as called for in Contract Documents.

1.5 WARRANTIES & BONDS. When written guarantees beyond one year after substantial completion are required of any section of the Work, Contractor shall secure such guarantees and/or warranties properly addressed and signed and in favor of Owner. These documents shall be delivered to Engineer upon substantial completion of Contractor's work and prior to execution of Certificate of Substantial Completion.

Delivery of guarantees and warranties shall not relieve Contractor from any obligation assumed under any other provisions of his contract.

Nothing herein intends or implies that guarantees and/or warranties shall apply to work abused or neglected by Owner.

SECTION 106

MOBILIZATION

DESCRIPTION

1.1 GENERAL. This item of work is provided to cover the Contractor's cost for general and miscellaneous responsibilities and operations not normally attributable to, or included in, any other single bid schedule item. This shall include, but not necessarily be limited to, work, described or enumerated in this section under the following subsections.

CONSTRUCTION

2.1 MOVING TO AND FROM JOB SITE. This shall include the Contractor's preliminary arrangements for starting construction operations, work schedules, and transportation of equipment and personnel to and from the project.

2.2 TEMPORARY FACILITIES.

Field Office. The Contractor(s) shall provide and maintain a temporary field office on the project or within 5 miles of the project limits.

Sanitary Facilities for Construction Workers. The Contractor shall provide, for all his workers on the project, adequate and reasonably convenient uncontaminated drinking water supply and temporary toilet facilities. All facilities shall comply with the Utah Safety and Health Act.

Utilities for Construction Operations. The Contractor shall make arrangements for, secure and pay for, any and all utility supplies such as electric power, water, natural gas or telephone that may be required for prosecution of the work.

Temporary Lighting. The Contractor shall provide all temporary lighting required for prosecution of his work and for employee and public safety. As a minimum, lighting levels during working hours shall meet the requirements of U.O.S.H.A. Subsection 1926.56 Illumination.

Heating and Ventilating. The Contractor shall provide any and all heating and ventilating equipment required to assure a safe environment for workers and to prevent damage to the project facilities from freezing or excessive temperature.

2.3 PUBLIC SAFETY AND TRAFFIC CONTROL. The cost of all safety and traffic control devices shall be included in the lump sum bid price for "Mobilization."

2.4 RESTORATION OF CONSTRUCTION SITE. The cost of all clean-up work as specified in the following sections shall be included in the Bid Schedule lump sum price for "Mobilization."

2.5 TEMPORARY UTILITIES. The Contractor shall arrange for, secure and pay directly any and all temporary utility supplies he may require for prosecution of his work. The cost of such utilities shall be included in the lump sum price of "Mobilization."

2.6 BONDS AND PERMITS. The Contractor shall secure all bonds and permits required for the prosecution of the work, the cost of which shall be included in the lump sum price of "Mobilization."

SECTION 107

METHOD OF MEASUREMENT & BASIS OF PAYMENT

All work will be measured by the units indicated in the bid schedule. Payment will be considered complete compensation for all design, labor, material and equipment necessary to complete each item in accordance with the Contract Documents, Specifications, and Drawings.

All temporary construction signs and flagging shall be according the Manual on Uniform Traffic Control Devices (MUTCD), latest edition.

The cost of all safety and traffic control devices shall be included in the lump sum bid price for "Mobilization."

General

Bid Item #1 – Mobilization

Payment for this work will be made at the contract unit price for "Mobilization" under bid item #1. Six payments will be made in accordance with the following schedule:

- (1) When 5% of the original contract amount is earned, 25% of the amount bid for mobilization, or 2 1/2% of the original contract amount, whichever is lesser, will be paid.
- (2) When 10% of the original contract amount is earned, 50% of the amount bid for mobilization, or 5% of the original contract amount, whichever is lesser, will be paid.
- (3) When 25% of the original contract amount is earned, 60% of the amount bid for mobilization, or 6% of the original contract amount, whichever is lesser, will be paid.
- (4) When 65% of the original contract amount is earned, 90% of the amount bid for mobilization, or 9% of the original contract amount, whichever is lesser, will be paid.
- (5) When 80% of the original contract amount is earned, 100% of the amount bid for mobilization, or 10% of the original contract amount, whichever is lesser, will be paid.
- (6) Upon completion of all work on the contract any unpaid amount of the original contract amount for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments.

Bid Item #2 – Removals

This item is for the removal and disposal of all debris generated due to project construction. Including but not limited to asphalt, and organics for the entire project limits.

This item shall include all materials, labor and equipment necessary to perform removal operations for the project to the limits and extents shown on the drawings. The price bid shall

include removal and proper disposal, to an approved site, all organic materials including bushes, shrubs, plants or other deleterious materials and debris from the site and shoulder areas in preparation of earthwork and grading for the project.

Payment for this item will be made at the contract lump sum price specified in the bid schedule under bid item #2.

Bid Items #3 – Debris Basin Excavation (Cut & Fill)

This item is for all earthwork, grading, and dust control for the project area including shoulders and cut/fill slopes as necessary to construct a debris basin with a minimum capacity of 5000 C.F.

Payment for earthwork, and dust control shall include all earthwork as shown on drawings. Grading shall be made to the top of prepared subgrade to the grades shown on the plan.

The price bid shall include all costs for earthwork, excavation, grading, subgrade preparation, shoulder grading, rock excavation, dewatering, hauling & disposal of any excess earth materials, and dust control measures to an approved site as previously defined.

Payment for this item will be made at the contract unit prices specified in the bid schedule under bid item #3.

Bid Item #4 –18” Dia. HDPE Pipe

Measurement for payment of this item shall be based on the number of lineal feet of pipe actually placed as determined by measurement horizontally between ends as laid.

The price bid per lineal foot for this item shall be considered complete compensation for all labor, miscellaneous materials and appurtenances, and equipment necessary to complete a functioning storm drainage system, for the size and type of pipe and fittings as indicated in the bid schedule, plan sheets and these specifications, which shall include, but not be limited to, clearing, excavation, rock excavation, bedding, furnishing and installation of pipeline, fittings, connections to existing system and backfill.

Payment for this item will be paid for by the lineal foot at the contract unit price specified in the bid schedule under bid item #4.

Bid Item #5 –Re-Grade Barrow Ditch

Measurement for payment of this item shall be based on the number of lineal feet of ditch that is re-graded to insure a minimum slope of 1% to the catch point in the existing barrow ditch as indicated on the plans.

The price bid for this item shall be considered complete compensation for all labor, miscellaneous materials and appurtenances, and equipment necessary to complete Re-Grade Barrow Ditch as indicated in the bid schedule, plan sheets and these specifications, which shall include, but not be limited to, clearing, excavation, rock excavation.

Payment for this item will be paid for by the lineal foot re-graded at the contract lineal foot price specified in the bid schedule under bid item #5.

Bid Item #6– Check Dams

The price bid for this item shall be considered complete compensation for all labor, miscellaneous materials and appurtenances, and equipment necessary to install the check dams as shown on the detail sheet of the plans, which shall include, but not be limited to, clearing, excavation, rock excavation, bedding, furnishing and installation of 6” cobble, 2” minus rock facing, and filtration fabric.

Payment for this item will be made for “each” installed check dam as determined by quantity at the contract unit price specified in the bid schedule under item #6.

Bid Item #7 –Rock Lining at Culvert Outlets

This item is for furnishing and installing a 6” cobble rock lining at the culvert outlets as shown on the construction drawings.

The unit price for this item shall be considered complete compensation for all labor, equipment, miscellaneous materials and appurtenances necessary to complete a functioning rock ditch liner as indicated on the plan sheets and these specifications, which shall include, but not be limited to, clearing, excavation, and rock excavation.

Payment for this item will be made at the per each price specified in the bid schedule under bid item #7.

Bid Item #8 – Asphalt Repairs

These items are for all the asphalt repairs needed to place the new 18” culvert under the roadway as shown on the construction drawings. All repairs are to be made according to the standards and specifications of Kane County UT. It is the contractor’s responsibility to obtain all needed permits and permission before beginning construction in the right of way.

Measurement for payment shall be made by the square foot of repairs made to the roadway.

Payment for this item will be made at the square foot price as specified in the bid schedule under bid items #8.

SECTION 108

NON-PAYMENT ITEMS

The Contractor shall not be paid for the following items. The costs associated with these items should be included in the unit prices for other items on the Bid Schedule.

- A. All materials, labor and equipment required to excavate, uncover, remove, replace, or reconstruct any facility or improvement that was not properly inspected and tested at the time of installation as required by these specifications.
- B. All construction watering and dust control costs.
- C. All items required to be finished on the final inspection "Punch List".
- D. All removal and replacement of concrete or road base due to faulty materials or workmanship.
- E. All over excavation required due to errors or other judgmental decisions and assumptions on the part of the Contractor.
- F. Repairs to any existing utilities including power lines, water laterals and irrigation line.
- G. Damage to public or other physical facilities resulting from the contractor's negligence or construction operations, etc.
- H. Restoration of existing surface improvements, except as specified.
- I. Sawcutting any existing asphalt required to complete the project, except as specified.
- J. Coordination and scheduling delivery of the construction materials with material suppliers and inspection of the materials upon delivery.
- K. All costs associated with the removal and replacement of materials that are unable to meet testing or warranty requirements. This includes, but is not limited to, excavation, disposal, replacement, shipping and installation costs.
- L. All costs associated with providing traffic control during construction.

PART C
SPECIAL PROVISION

SPECIAL PROVISION

Clearing and Grubbing

This work shall consist of clearing, grubbing, removing, and disposing of all vegetation and debris within the limits of construction and designated clear zones, except such objects as are designated to remain or be removed in accordance with other sections of these specifications. This work shall also include the preservation from injury or defacement of all vegetation and objects designated to remain.

CONSTRUCTION

The Engineer will establish clearing limits and designate all trees, shrubs, plants, and other things to remain. Areas to be cleared will be as set forth in the subsection to follow. The Contractor shall preserve all things designated to remain. Paint required for cut or scarred surfaces of trees or shrubs selected for retention shall be an approved asphaltum base paint prepared especially for tree surgery. Dust that originates from the Contractor's operations either inside or outside the right-of-way shall be controlled at all times at the Contractor's expense.

AREAS TO BE CLEARED. Areas to be cleared shall be one or more of the following:

- (a) The entire area upon which project construction is to be performed to the width of the excavation and fill slope lines. The slope lines are the contract limits.
- (b) Areas on which service roads or ramps, streets, approaches, and all other accessory roads and connections are to be constructed, such areas to extend to the width of the excavation and embankment slope lines.
- (c) Areas designated in the plans or Special Provisions.

CLEARING AND GRUBBING. Unless otherwise specified, the Contractor shall remove obstructions such as brush, trees, logs, stumps, roots, heavy sod, vegetation, rock, stones larger than 6 inches in any dimension, broken or old concrete and pavement, debris, abandoned concrete ditches and structures where the completion of the work requires their removal. It is anticipated that normal clearing and grubbing will extend from 3 to 6 inches in depth, however, deeper grubbing should be expected where root bulbs of large vegetation are present. Following clearing and grubbing, if unsuitable debris and garbage are encountered below the normal grubbing depths, removal and replacement of the debris and garbage will be included under separate pay item as indicated in the subsequent EARTHWORK specification. The depth and extent of over excavation shall be determined by the Engineer and Owner.

Material that is removed and is not to be incorporated in the work shall be disposed of off the site at an approved disposal location.

SPECIAL PROVISION

Site Grading and Preparation

This work shall consist of all grading and earthwork within the limits of construction including all excavation, rock excavation, fill, moving, hauling, importing and exporting of soils & rock to the grades as shown on the plans.

Rough grading and earthwork shall be performed within the bounds shown on the plans. The Contractor shall grade the site to the rough grade elevations as shown on the plans.

Upon completion of the project, the grades will be checked for the following tolerances: Each building pad including the required 10' over excavation shall be graded to within $\pm 0.1'$. All other areas shall be graded to within $\pm 0.3'$. The contractor shall re-grade any areas that are not within tolerance. Final payment will occur when the site rough grading is within tolerance.

The majority of the site excavation consists of shale limestone and clay stone bedrock. The shale and limestone bedrock may be broken up and used as fill. Portions of the rock is moderately hard and may be difficult to process with excavation equipment (wetting, tracking and compacting). This rock (larger than 1 foot particles) should be discarded off site. As an alternative, the material may be mechanically crushed and re-used.

Fill Placement: In order to achieve compaction, material should be placed in lift thicknesses appropriate for the compaction equipment used. Loose lift thicknesses up to 12 inches may be used for heavy duty compaction equipment. The lift thickness should be reduced for lighter equipment or hand compactors. The Engineer shall evaluate the compaction equipment prior to starting any fill operations. Lift thicknesses shall be approved by the Engineer in writing upon evaluation of the compaction equipment to be used. The fill should be compacted to the minimum percentage as listed in the referenced Geotechnical Report. In addition, all fill material in building and parking lot areas shall be compacted to 95% maximum density as determined by ASTM D-1557. Each lift of material placed shall be tested for compaction.

SPECIAL PROVISION

EXCAVATION AND BACKFILL

DESCRIPTION

1.1 GENERAL. This work shall consist of any excavation on the project site. Also included in this work is the excavation and backfill of storm drain trenches as shown on the plans.

When the terms "Backfill" or "Trench Backfill" are used herein, they shall be construed to mean one or more of the types of backfill specified below under "MATERIALS."

MATERIALS

2.1 SELECTED BACKFILL. Selected backfill shall be of a quality acceptable to the Engineer and may consist of suitable material from excavations. It shall be free from sod, frozen earth, organic materials, rubbish, or debris. The backfill material shall have a sufficient amount of fine material to fill the voids between the coarser aggregate. In addition thereto, the material shall conform to the following requirements:

SIEVE SIZES	PERCENTAGE OF WEIGHT PASSING
6"	100
3"	80-100
No. 4	35-100

2.2 SAND BACKFILL. Sand backfill shall consist of natural sand or a mixture of sand with gravel with 100% of the material less than 1-inch.

CONSTRUCTION

3.1 EXCAVATION, GENERAL. Excavation shall include, without classifications, the removal of all materials of whatever nature encountered, including all obstruction of any nature that would interfere with the proper execution and completion of the work. The removal of said materials shall conform to the lines and grades shown on the plans. Excavation for pipe, wire, or conduits shall be by open trench unless otherwise specified or shown on the plans. However, should the Contractor elect to tunnel or jack any portion not so specified, he shall first obtain written approval from the Engineer. The Contractor shall furnish, place, and maintain all supports and shoring that may be required for the sides of the excavation. The Contractor shall also furnish, place, and maintain all pumping, ditching, or other approved measures for the removal and/or exclusion of water from the site. This provision shall include storm water and waste water reaching the site of the work from any source so as to prevent damage to the work or adjoining property. The Contractor shall be responsible for any damage to persons or property due to interruption or diversion of storm or wastewater as a result of his operations.

(a) Excavation of pipe trenches. Except as otherwise shown or provided herein, excavation shall be open cut trenches with vertical sides up to the top of the pipe, and as near vertical as possible from the top of the pipe to the ground surface. The bottom of the trench shall have a maximum width equal to the outside diameter of the pipe plus 36 inches or as shown on the plans. If the maximum trench width is exceeded, the Contractor shall provide additional bedding with no additional payment therefore. Trench widths greater than the outside diameter of the pipe plus 36 inches may be required by the Engineer for flexible pipe to compensate for low stability soils.

Except when otherwise specified or ordered by the Engineer, the bottom of the trench shall be excavated uniformly to the grade or depth indicated on the drawings. The maximum amount of open trench permitted in any one location shall be 500 feet, or the length necessary to accommodate the amount of pipe installed in a single day, whichever is greater, unless otherwise approved by the Engineer. Trench shall be considered open until backfilled to finish surface. Trenches across streets shall be completely backfilled as soon as possible after pipe, wire, or conduit installation.

Substantial bridging, properly anchored, capable of carrying the legal limit loading, in addition to adequate trench bracing, shall be used to bridge across trenches at street crossings where trench backfill and temporary patches have not been completed during regular working hours. Safe and convenient passage for pedestrians and access to all properties shall be provided.

(b) Excavation for concrete structures. Except as otherwise shown or provided herein, excavation shall be open cut with as near vertical sides as possible from the bottom of the box to the ground surface.

(c) Disposal of Unsuitable and Excess Excavated Materials. Excess material and excavated material unsuitable for backfill of the tank shall be removed from the site of the work by the end of each working day unless otherwise approved by the Engineer and disposed of by the Contractor at a location selected by the Contractor and approved by the Engineer.

3.2 CUT AND FILL SLOPES. Cut slopes associated with excavation of material necessary for completion of the Project shall be as indicated on the plans, or flatter. Cut slope excavation shall comply with local codes, ordinances and requirements of agencies having jurisdiction. The cut slopes shall be scaled to remove all loose and/or unstable material and shall be constructed and maintained in a safe condition. The contractor shall be responsible for maintaining all cut slopes in a safe condition during tank construction.

3.3 BEDDING.

- a) Pipe Bedding. Except as otherwise provided herein or in the Special Provisions, or as otherwise shown on the plans, pipe trenches shall be over excavated to a depth of at least four (4) inches below the bottom of the pipe barrel and to a depth which will be sufficient to provide at least two (2) inches clearance under the pipe bell, and backfilled to the required grade of the bottom of the pipe with "Sand Backfill."
- b) Pipe Bedding Compaction. The pipe bedding shall be compacted to at least 90% of maximum density in areas where the surface is to be unpaved and at least 95% of maximum density in areas where the surface is to be paved. Pipe bedding shall be placed and prepared in such a manner that there will be a firm, continuous support along the entire length of the pipe barrel. Bell holes in the bedding shall provide at least two (2) inches clearance beneath pipe joints.

3.4 BACKFILL.

- a) Pipe Backfill. Except as otherwise provided or approved by the Engineer, after the pipe or conduit is laid, trenches shall be backfilled with "Sand Backfill" in the pipe zone as defined in the following table:

PIPE OR CONDUIT	PIPE ZONE
2 inch or less diameter	Sub-grade to 6 inches above the top of the pipe.
Greater than 2 inch diameter except vitrified clay pipe	Sub-grade to 12 inches above the top of the pipe.
Vitrified clay pipe	Sub-grade to 24 inches above the top of the pipe.

The partially backfilled trench shall be compacted to not less than 90% of maximum density in unpaved areas and 95% of maximum density in paved areas.

- (1) In unpaved areas, the remaining backfill shall be "Selected Backfill," except that no stones or lumps greater than six (6) inches will be permitted if "Selected Backfill" is used in trenches two (2) feet or less in width. The material shall be compacted to not less than 90% of maximum density.
- (2) In paved areas the remaining backfill shall be "Selected Backfill," except that no stones or lumps greater than three (3) inches will be permitted if "Selected Backfill" is used in trenches two (2) feet or less in width. The material shall be compacted to not less than 95% of maximum density.

3.7 SOILS TESTS. Where backfill is required to be compacted to a specified density, field tests for compliance may be made by the Engineer in accordance with ASTM D-1557. Where tests reveal noncompliance with the requirements of the contract, the Contractor shall bear the costs of subsequent re-compaction and re-testing until the required density is obtained.

RIP-RAP

3.1 GENERAL. Rip-rap shall be furnished and placed to the prescribed extents and thickness shown on the drawings.

Sources of rip-rap subject to degradation, such as shale, claystone, friable sandstone, or other unsuitable sources will not be acceptable. If rip-rap is to be obtained from a source not previously tested, the contractor shall submit representative samples to the Engineer for testing at least two weeks before the rip-rap is required for use. The samples shall consist of three to four rock fragments totaling 200 pounds. The Engineer reserves the right to inspect all proposed quarry sites. The approval by the Engineer of some rock fragments from a particular quarry site shall not be construed as constituting the approval of the entire quarry.

3.2 QUALITY AND SIZE. Rock fragments used as rip-rap shall be dense, sound, resistant to abrasion, and shall be free from cracks, seams or other defects that would promote degradation. Rip-rap size shall range from 4 to 12 inches with a maximum size of 12 inches. The minimum average rock size (D_{50}) shall be 6 inches, depending on the application. No greater than 20 percent of the rip-rap material shall be less than 4 inches in maximum size. Sand and rock dust shall be less than 5%, by weight, of the total rip-rap material.

Rip-rap need not be compacted but shall be placed to grade to insure that the larger rock fragments are uniformly distributed and the smaller rock fragments serve to fill the spaces between the larger rock fragments. Placement should ensure a well-keyed, densely placed material of uniform specified thickness.

SPECIAL PROVISION

TEMPORARY ENVIRONMENTAL CONTROLS

The Kane County Grading Manual, latest edition, including all addenda shall govern the erosion control aspect of this contract except as modified in these special provisions and the general conditions of the contract provided heretofore. The Contractor shall have a complete copy of the above mentioned specifications on the project at all times.

In case of conflict between the Kane County Grading Manual and the general conditions, special provisions, modifications, and additions included in these agreements, the special change, modifications and additions shall govern.

SPECIAL PROVISION

Non-Payment Items

Non-Payment Items. The Contractor shall not be paid for the following items. The costs associated with these items should be included in the unit prices for other items on the Bid Schedule.

- A. All materials, labor and equipment required to excavate, uncover, remove, replace, or reconstruct any facility or improvement that was not properly inspected and tested at the time of installation as required by these specifications.
- B. All construction watering and dust control costs.
- C. All items required to be finished on the final inspection "Punch List".
- D. All removal and replacement of concrete, road base or bituminous materials required due to faulty materials or workmanship.
- E. All over excavation required due to errors or other judgmental decisions and assumptions on the part of the Contractor.
- F. Repairs to any existing utilities including power lines, water laterals and irrigation line.
- G. Damage to public or other physical facilities resulting from the contractor's negligence or construction operations, etc.
- H. Restoration of existing surface improvements.
- I. Sawcutting any existing asphalt required to complete the project.
- J. Coordination and scheduling delivery of the construction materials with material suppliers and inspection of the materials upon delivery.
- K. All costs associated with the removal and replacement of materials that are unable to meet testing or warranty requirements. This includes, but is not limited to, excavation, disposal, replacement, shipping and installation costs.
- L. All costs associated with providing quality control inspection and testing required under Section 2.8 including preparation of a written report to summarize and certify results.
- M. All costs associated with providing traffic control during construction.