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GENERAL CONDITIONS

ROADWAY IMPROVEMENT PROJECT

RUNNING BROOK ROAD, ELBERT COUNTY

GENERAL CONDITIONS – ROADWAY IMPROVEMENT PROJECT

RUNNING BROOK ROAD, ELBERT COUNTY

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PART 1 DEFINITIONS

Wherever 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:

Addendum - Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

Agreement - The written agreement between Owner and Contractor covering the Work to be performed.

Agreement Price - The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

Application for Payment - The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

Bid Form - The offer or proposal of the Bidder attached to the Agreement as Exhibit A.

Change Order - A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

Contract Documents - As defined in the Agreement.

Contract Time - The number of days stated in the Agreement for the Completion of the Work.

Contractor - The person or entity with whom Owner has entered into the Agreement to perform field construction.

Day - A calendar day of twenty-four hours measured from midnight to the next midnight.

Defective - An adjective which when modifying the word “Work” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

Drawings - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

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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 parties to sign and deliver.

Engineer - The person or entity named as "Engineer" in the Agreement.

Field Order - A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

Modification - (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

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.

Notice to Proceed - A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

Owner – Elbert County, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

Project - The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part. The Project generally consists of furnishing, mixing and compacting recycled asphalt into the gravel road surface over up to 1.6 miles of Running Brook Road, improving specified roadside ditches and culverts along Running Brook Road and adjacent segments and other shaping and grading within the road segment right of way.

Part - Section(s) of these General Conditions.

Plans - The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier

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or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

Site - Any area or areas where Work is to be performed on the Project.

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.

Subcontractor - A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Substantial Completion - The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

Supplementary Conditions - The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term "Work" shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract Documents and the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

PART 2 PRELIMINARY MATTERS

2.01 DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE

A. When Contractor delivers the executed Agreement to Owner's Representative, Contractor shall also deliver to Owner's Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

2.02 EXECUTION AND TRANSMISSION OF DOCUMENTS

A. At least four (4) copies of the Contract Documents will be prepared by Owner's Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on

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ACORD Form 27 and copies of applicable insurance policies, and submit all copies to Owner's Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B. Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner's Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

2.03 COPIES OF DOCUMENTS

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

2.05 STARTING THE PROJECT

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

2.06 BEFORE STARTING CONSTRUCTION

A. 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 or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

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2.07 PRECONSTRUCTION CONFERENCE

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE

3.01 INTENT

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code 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. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

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D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Bid Documents consists of Construction Documents, Contract Documents (e.g., Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond), General Conditions, Technical Specifications, if any, Compliance Documents and Technical Reports. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein. Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

3.02 REUSE OF DOCUMENTS

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall 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; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 AVAILABILITY OF LANDS

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. 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. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 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.

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4.02 PHYSICAL CONDITIONS - INVESTIGATIONS AND REPORTS

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

4.03 UNFORESEEN PHYSICAL CONDITIONS

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

4.04 REFERENCE POINTS

A. Owner shall provide engineering surveys for construction to establish reference points which in its 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 replacement or relocation of such reference points by professionally qualified personnel.

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PART 5 BONDS AND INSURANCE

5.01 PERFORMANCE AND OTHER BONDS

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall remain in effect at least until **one (1) year** after the date when final payment becomes due, or until the **one-year** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado 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 Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. 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 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

5.02 CONTRACTOR'S INSURANCE REQUIREMENTS

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

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2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

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; and

7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

(1) Worker's Compensation and Employers' Liability

(i) State: Statutory

(ii) Employers' Liability
$500,000 Each Accident

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$500,000 Disease, Policy Limit

$500,000 Disease, Each Employee

(iii) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(2) General Liability (Occurrence Form):

(i) Combined Bodily Injury and Property Damage:
$1,000,000 each occurrence

$1,000,000 Personal and Advertising Injury

$2,000,000 General Aggregate

$1,000,000 Products/Completed Operations Aggregate

(ii) The following coverages must be included:

(a) Premises Operations

(b) Independent Contractor's Protective

(c) Explosion, Collapse

(d) Underground

(e) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)

(f) Broad Form Property Damage

(g) Personal/Advertising Injury

(h) General Aggregate Limit (applies to each project)

(i) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.

(j) Subcontractors shall comply with all provisions of this Part.

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(k) A waiver of subrogation endorsement in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(3) Automobile Liability:

Combined Bodily Injury and Property Damage:
$1,000,000 per person

$1,000,000 each Accident

The following coverages must be included:
Owned automobiles

Non-owned and hired automobiles

(4) Umbrella Excess Liability
$5,000,000 each Occurrence/$5,000,000 Aggregate

(5) Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

1. The builder's risk insurance policy shall be on an "all risk" basis for the entire Project and shall include (1) coverage for any ensuing loss from faulty workmanship, defective materials, and omission or deficiency in design or specifications, (2) coverage against damage or loss caused by earth movement, flood, fire, hail, lightning, wind, explosion, smoke, water damage, theft, vandalism and malicious mischief and machinery accidents and operational testing, (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project, (4) transit coverage, with sub-limits sufficient to insure the full replacement value of any key equipment item and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. The policy shall provide for coverage in the event an occupancy or use permit is issued for any portion or portions of the Work prior to Substantial Completion of the Work. Builder's risk insurance shall be written in completed value form and shall protect Contractor and Owner. The amount of such insurance shall be not less than the insurable value of the Work at completion less the value of the materials and equipment insured under installation floater insurance and shall provide for recovery on a "replacement cost" basis.

2. Builder's risk insurance shall provide for losses to be payable to Contractor and Owner as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the

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coverage provided the insurance company shall have no rights of recovery against the Contractor or Owner.

NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)

E. To the extent that Contractor‘s work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner’s interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner’s exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

5.03 INSURANCE CERTIFICATES/POLICY

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner’s Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

5.04 ADDITIONAL REQUIREMENTS

A. No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than $1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

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B. If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C. The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D. For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

5.05 INDEMNIFICATION

A. Contractor shall indemnify save harmless and defend the Owner, the Engineer and all of their consultants, directors, officers, agents and employees, from any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), arising directly or indirectly, in

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whole or in part, out of the negligence or any criminal or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors or any person for whom Contractor is responsible, in connection with this Agreement and the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not act as limitations on the Contractor's obligation to indemnify the Owner, Owner's Representative, and each of their consultants, including the Engineer and their directors, officers, agents and employees.

B. In any and all claims against Owner or Engineer or any of their agents or employees or the Owner's Representative by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A 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 Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

PART 6 CONTRACTOR'S RESPONSIBILITIES

6.01 SUPERVISION AND SUPERINTENDENT

A. The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Owner, Engineer, or Owner's Representative shall not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction or for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B. Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress 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. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

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C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner's Representative. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

6.02 LABOR, MATERIALS, AND EQUIPMENT

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the

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Supplementary Conditions, 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 Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials confirming to the requirements of these specifications and which have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

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Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

6.03 EQUIVALENT MATERIALS AND EQUIPMENT

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the

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item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and 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 make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the 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 shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs 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 shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

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6.04 CONCERNING SUBCONTRACTORS

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, 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 Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

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

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

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E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

6.05 PATENT FEES AND ROYALTIES

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work.

6.06 PERMITS

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, including but not limited to all inspection charges of agencies having appropriate jurisdiction and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time.

6.07 LAWS AND REGULATIONS

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project ("the applicable regulations"). If Contractor observes that

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the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

6.08 TAXES

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

6.09 USE OF PREMISES

A. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. 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, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

C. Contractor shall not load or 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.

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the

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obstruction. All material found on the Site or removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

6.10 RECORD DOCUMENTS

A. Contractor shall keep one record of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

6.11 SAFETY AND PROTECTION

A. 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:

1. All employees on the Work or other persons who may be affected thereby;

2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for

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any reason and the security of all properly located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the 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 utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them 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 anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall until continue such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

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Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be

marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

6.12 EMERGENCIES

A. 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 Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "Plans", the interpretation shall be the Plans as affected by all authorized alterations then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings

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will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy 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 any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as

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binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

6.14 CONSTRUCTION STAKES

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer and the Owner. If the Contractor refuses to suspend operations on verbal order, the Owner's Representative shall issue a written order giving the reason for shutting down the Work. After placing the order giving the reason for shutting down the Work and placing the order in the hands of the person in charge, the Owner's Representative shall immediately leave the job. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract.

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6.15 PRIVATE PROPERTY AND EXCAVATION

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

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PART 7 COORDINATION OF WORK

7.01 OWNER'S RIGHT TO PERFORM

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

7.02 CONTRACTOR TO COORDINATE

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its 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.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

PART 8 OWNER'S RESPONSIBILITIES

8.01 OWNER TO COMMUNICATE THROUGH ENGINEER OR OWNER'S REPRESENTATIVE

A. Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

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PART 9 STATUS OF ENGINEER DURING CONSTRUCTION

9.01 DUTIES OF ENGINEER

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

9.02 VISITS TO SITE

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and 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 to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

9.03 CLARIFICATIONS AND INTERPRETATIONS

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

9.04 REJECTING DEFECTIVE WORK

A. Engineer will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

9.05 A. Work or materials concealed or performed without the prior notice specified above, will be subject to such tests or exposure as may be necessary to prove to the satisfaction of the inspector, that all materials used and the work done are in conformity with the contract documents. All labor and equipment necessary for exposing and testing shall be furnished and paid for by the Contractor. The Contractor shall replace, without additional cost to the Owner, any materials or work damaged by exposure or testing.

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9.06 DECISIONS ON DISAGREEMENTS

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

9.07 LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" 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 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 the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that

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Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner's Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor of Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

PART 10 CHANGES IN THE WORK

10.01 OWNER MAY ORDER CHANGES

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12 A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the

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Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

PART 11 AGREEMENT PRICE AND CHANGES

11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "Request for Proposal" outlining the scope of Work contemplated for said construction changes.

2. The Contractor shall submit within fourteen (14) days of receipt of a "Request for Proposal" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict

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account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;

2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);

3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or

4. In any other manner agreed upon by the parties.

11.02 COST OF THE WORK

A. 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 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

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. Payroll cost 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 shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday

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or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' 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 all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a 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 shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

5. Supplementary costs include the following:

a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, 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.

b. 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 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.

c. Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

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d. Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

e. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, 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 11.03.A.

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

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

h. The cost of utilities, fuel and sanitary facilities at the Site.

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

B. The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its 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 subparagraph 11.02.A.1--all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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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.

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 additional Bonds and insurance required because of changes in the Work).

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.

6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

11.03 CONTRACTOR'S FEE

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be ten percent (10%); and

b. For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be five percent (5%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%) as set forth in Paragraph 11.03A.1.a; and

c. No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the net increase if any.

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PART 12 CONTRACT TIME AND CHANGES

12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

C. All the time limits stated in the Contract Documents are of the essence of the Agreement.

PART 13 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 WARRANTY AND GUARANTEE

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

13.02 ACCESS TO WORK

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

13.03 TESTS AND INSPECTIONS

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

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D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

13.04 UNCOVERING WORK

A. 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.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon 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 bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

13.05 OWNER MAY STOP THE WORK

A. If the Work is defective, or Contractor fails to supply sufficient skilled workmen 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 the 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 other party.

13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any 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 nondefective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

13.07 ONE YEAR CORRECTION PERIOD

A. If within one (1) year after the date of initial acceptance by the Owner, the City of Lakewood or another entity as might be appropriate, or such longer period of time as may be prescribed by law 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 within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. 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 direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

13.08 ACCEPTANCE OF DEFECTIVE WORK

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

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13.09 OWNER MAY CORRECT DEFECTIVE WORK

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete 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 or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and 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 Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION

14.01 SCHEDULES

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in

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the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

14.02 APPLICATION FOR PROGRESS PAYMENTS

A. On or before the twenty-fifth (25th) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed 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 and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of lien for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than $1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this

Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

14.03 CONTRACTOR'S WARRANTY OF TITLE

A. 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 at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Claims").

14.04 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Owner's Representative will, within ten (10) 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 Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation). However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make 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 or Owner's opinion to protect Owner from loss because:

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1. The Work is defective, or completed Work has been damaged requiring correction or replacement,

2. Written Claims have been made against Owner or Claims have been filed in connection with the Work,

3. The Agreement Price has been reduced because of modifications,

4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A,

5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or

6. Of Contractor's failure to make payment to Subcontractors for labor, materials or equipment.

14.05 SUBSTANTIAL COMPLETION

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete 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 its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

14.06 PARTIAL UTILIZATION

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods

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for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within fifteen (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1, Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing, have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

14.07 FINAL INSPECTION

A. Upon written notice from Contractor that the Work is complete and that all items on the punch list have been completed, 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 remedy such deficiencies.

14.08 FINAL APPLICATION FOR PAYMENT

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents--all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all Claims arising out of or filed in connection with the Work. In lieu thereof and as

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approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a Claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Claim.

14.09 FINAL PAYMENT AND ACCEPTANCE

A. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Owner's Representative's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. 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. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with Owner a receipt in full or an order for withdrawal in writing from claimant.

B. 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, 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. Payment shall be made under

the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.10 CONTRACTOR'S CONTINUING OBLIGATION

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by the Owner and the City of Lakewood, or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10 A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

PART 15 SUSPENSION OF WORK AND TERMINATION

15.01 ENGINEER OR OWNER MAY SUSPEND WORK

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be

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filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

15.02 OWNER MAY TERMINATE

A. Upon the occurrence of any one or more of the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,

2. If Contractor makes a general assignment for the benefit of creditors,

3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,

4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,

5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,

6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,

7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,

8. If Contractor disregards the authority of Engineer,

9. Failure of the Contractor to start the Work on the date given in the Notice to Proceed,

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10. Substantial evidence that progress being made by the Contractor is insufficient to complete the Work within the specified time,

11. Deliberate failure on the part of the Contractor to observe any requirement of these Specifications,

12. Failure of the Contractor to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,

13. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or

14. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if a satisfactory effort has not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until it is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and 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 Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights 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.

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15.03 CONTRACTOR MAY STOP WORK OR TERMINATE

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (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 (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

15.04 OWNER MAY TERMINATE FOR CONVENIENCE

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.

4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

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5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner, and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

a. The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

b. The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6, but the Contractor:

a. shall not be required to extend credit to any purchaser; and

b. may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such

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termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

a. The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents, timekeepers, clerks, expediters, watchmen, small tools, incidental job burdens and general office expenses.

b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3 above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

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2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7 of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D and the Owner utilizes this Paragraph 15.04.E, no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C and has failed to request an extension of time, it shall have no such right of appeal. In any case where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or

2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.

2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the

continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

PART 16 MISCELLANEOUS

16.01 GIVING NOTICE

A. Whenever any provision of the Contract Documents requires the giving of written notice it shall 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 prepaid, to the last business address known to the giver of the notice.

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

16.02 COMPUTATION OF TIME

A. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

16.03 CORRECTION PERIOD

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

16.04 GENERAL

A. Should Owner or Contractor suffer injury or damage to its 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 responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. 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 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and

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Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall 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. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

PART 17 ADDRESSES

17.01 OWNER

A. Owner is the Company named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Elbert County
215 Comanche Street
Kiowa, CO 80117

with a copy to: _____

17.02 ENGINEER

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01D. in the Agreement.

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17.03 CONTRACTOR/SURETY

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

17.04 CHANGE OF ADDRESS

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

PART 18 LIQUIDATED DAMAGES

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

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PART 19 EXISTING UNDERGROUND INSTALLATIONS

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

PART 20 STREAMLINED SPECIFICATIONS

A. These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases “The Contractor shall,” “in conformity therewith,” “shall be,” “as shown on the Drawings,” “a,” “an,” “the,” and “all” are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

PART 21 HANDLING OF DISPUTES

21.01 DISPUTES

A. Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively “Dispute”) shall be resolved as follows:

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Owner and Contractor shall, upon either party's written request sent certified mail, attempt to resolve the Dispute by mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association ("AAA") subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator's fees and expenses and the AAA's fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. Any award rendered by the arbitrator(s) may be appealed by either party.

All mediation and arbitration proceedings shall be held in Elbert County or such other place as the Owner may designate.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE

22.01 DESCRIPTION

A. The Owner's Representative is the Owner's agent and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. The Owner's Representative shall be Enertia Consulting Group, LLC.

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22.02 DUTIES AND RESPONSIBILITIES

A. CONFERENCES:

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

B. LIAISON:

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

C. MODIFICATIONS:

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

D. REPORTS:

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.

2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

E. PAYMENT REQUISITIONS:

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

22.03 LIMITATIONS OF AUTHORITY

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.

2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.

3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.

END OF SECTION

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SUPPLEMENTARY CONDITIONS

PART I SCHEDULES

A. Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

PART II WARRANTY START DATE

A. The effective start date of the one year warranty period is the date that Elbert County initially accepts improvements for the required warranty period. (See General Conditions Part 14.10 A)

END OF SECTION