This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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TABLE OF CONTENTS

Page

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY 6
1.01 *Defined Terms* 6
1.02 *Terminology* 8

ARTICLE 2 - PRELIMINARY MATTERS 9
2.01 *Delivery of Bonds* 9
2.02 *Copies of Documents* 9
2.03 *Commencement of Contract Times; Notice to Proceed* 9
2.04 *Starting the Work* 9
2.05 *Before Starting Construction* 10
2.06 *Preconstruction Conference* 10
2.07 *Initial Acceptance of Schedules* 10

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE 11
3.01 *Intent* 11
3.02 *Reference Standards* 11
3.03 *Reporting and Resolving Discrepancies* 11
3.04 *Amending and Supplementing Contract Documents* 11
3.05 *Reuse of Documents* 12

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS 12
4.01 *Availability of Lands* 12
4.02 *Subsurface and Physical Conditions* 12
4.03 *Differing Subsurface or Physical Conditions* 13
4.04 *Underground Facilities* 13
4.05 *Reference Points* 14
4.06 *Hazardous Environmental Condition at Site* 14

ARTICLE 5 - BONDS AND INSURANCE 16
5.01 *Performance, Payment, and Other Bonds* 16
5.02 *Licensed Sureties and Insurers* 16
5.03 *Certificates of Insurance* 16
5.04 *CONTRACTOR's Liability Insurance* 16
5.05 *OWNER's Liability Insurance* 17
5.06 *Property Insurance* 17
5.07 *Waiver of Rights* 18
5.08 *Receipt and Application of Insurance Proceeds* 19
5.09 *Acceptance of Bonds and Insurance; Option to Replace* 19
5.10 *Partial Utilization, Acknowledgment of Property Insurer* 19

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES 19
6.01 *Supervision and Superintendence* 19
6.02 *Labor; Working Hours* 20
6.03 *Services, Materials, and Equipment* 20
6.04 *Progress Schedule* 20
6.05 *Substitutes and "Or-Equals"* 20
6.07 *Patent Fees and Royalties* 23

6.08 *Permits* 23
6.09 *Laws and Regulations* 23
6.10 *Taxes* 23
6.11 *Use of Site and Other Areas* 23
6.13 *Safety and Protection* 24
6.14 *Safety Representative* 25
6.15 *Hazard Communication Programs* 25
6.16 *Emergencies* 25
6.17 *Shop Drawings and Samples* 25
6.18 *Continuing the Work* 26
6.19 *CONTRACTOR's General Warranty and Guarantee* 26
6.20 *Indemnification* 27

ARTICLE 7 - OTHER WORK 27
7.01 *Related Work at Site* 27
7.02 *Coordination* 28

ARTICLE 8 - OWNER'S RESPONSIBILITIES 28
8.01 *Communications to Contractor* 28
8.02 *Replacement of ENGINEER* 28
8.03 *Furnish Data* 28
8.04 *Pay Promptly When Due* 28
8.05 *Lands and Easements; Reports and Tests* 28
8.06 *Insurance* 28
8.07 *Change Orders* 28
8.08 *Inspections, Tests, and Approvals* 29
8.09 *Limitations on OWNER's Responsibilities* 29
8.10 *Undisclosed Hazardous Environmental Condition* 29
8.11 *Evidence of Financial Arrangements* 29

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION 29
9.01 *OWNER'S Representative* 29
9.02 *Visits to Site* 29
9.03 *Project Representative* 29
9.04 *Clarifications and Interpretations* 29
9.05 *Authorized Variations in Work* 30
9.06 *Rejecting Defective Work* 30
9.07 *Shop Drawings, Change Orders and Payments* 30
9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work* 30
9.10 *Limitations on ENGINEER's Authority and Responsibilities* 30

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS 31
10.01 *Authorized Changes in the Work* 31
10.02 *Unauthorized Changes in the Work* 31
10.03 *Execution of Change Orders* 31
10.04 *Notification to Surety* 31
10.05 *Claims and Disputes* 32

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK 32
11.01 *Cost of the Work* 32
11.02 *Cash Allowances* 34
11.03 *Unit Price Work* 34

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES 35
12.01 *Change of Contract Price* 35
12.02 *Change of Contract Times* 36
12.03 *Delays Beyond CONTRACTOR's Control* 36
12.04 *Delays Within CONTRACTOR's Control* 36
12.06 *Delay Damages* 36

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK 36
13.01 *Notice of Defects* 36
13.02 *Access to Work* 36
13.03 *Tests and Inspections* 37
13.04 *Uncovering Work* 37
13.05 *OWNER May Stop the Work* 37
13.06 *Correction or Removal of Defective Work* 38
13.07 *Correction Period* 38
13.08 *Acceptance of Defective Work* 38
13.09 *OWNER May Correct Defective Work* 38

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION 39
14.01 *Schedule of Values* 39
14.02 *Progress Payments* 39
14.03 *CONTRACTOR's Warranty of Title* 41
14.04 *Substantial Completion* 41
14.05 *Partial Utilization* 41
14.06 *Final Inspection* 42
14.07 *Final Payment* 42
14.09 *Waiver of Claims* 43

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION 43
15.01 OWNER May Suspend Work 43
15.02 *OWNER May Terminate for Cause* 43
15.03 *OWNER May Terminate For Convenience* 44
15.04 *CONTRACTOR May Stop Work or Terminate* 44

ARTICLE 16 - DISPUTE RESOLUTION 44
16.01 *Methods and Procedures* 44

ARTICLE 17 - MISCELLANEOUS 45
17.01 *Giving Notice* 45
17.02 *Computation of Times* 45
17.03 *Cumulative Remedies* 45
17.04 *Survival of Obligations* 45
17.05 *Controlling Law* 45

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

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

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

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

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

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

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

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

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

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

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

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

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

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

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

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

32. *PCBs*--Polychlorinated biphenyls.

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

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

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

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

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

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

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

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

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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

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

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 *Terminology*

A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or

adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby;

however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

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

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

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

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

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

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This

prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

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

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection

therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

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

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

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

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

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

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such

condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared 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.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and 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 it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

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.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 *OWNER's Liability Insurance*

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

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

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

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

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

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

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

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

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will

not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on

account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

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

6.05 *Substitutes and "Or-Equals"*

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

1. *"Or-Equal" Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by

ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date

prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

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

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all

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

6.09 *Laws and Regulations*

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

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely 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 persons on the Site or who may be affected by the Work;

2. all the Work and materials and 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

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

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

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

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

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

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

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

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation

from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

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

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose

acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by

such authority and responsibility will be itemized; and

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

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

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

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth

in the Contract Documents and will not be changed 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 as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

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

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

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, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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 in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 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 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

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

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with

respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* 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. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. 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 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, 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 Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

c. 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, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages 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.

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

h. 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.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

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

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. 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.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined

on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

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

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

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

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

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

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

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

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

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGI-

NEER, 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, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to 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, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to pro-gress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. ENGINEER will, within 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 ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

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

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or

equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

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

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

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

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

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 no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If,

after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

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

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment 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 for Payment.

C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

15.03 *OWNER May Terminate For Convenience*

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

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

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

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

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

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

DOCUMENT 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 ed.) have the meanings assigned to them in the General Conditions.

SC-4.02 – Subsurface and Physical Conditions

No reports of explorations and tests of subsurface conditions at the various work sites have been or will be conducted by the City.

SC-5 – Insurance

Under Section 5.02, delete any reference to the City or Owner purchasing or otherwise providing any .coverage associated with this project.

Under Section 5.03, Insurance provided by the Contractor, List the names or other parties or entities to be included as additional insured, Midvale City Corporation.

Under Section 5.04, The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation, etc., under paragraphs 5.04A and 5.04B shall be the statutory required coverages.

Comprehensive General Liability, under paragraphs 5.04A and 5.04B shall also include completed operations, and product liability coverage, and eliminate the exclusion with respect to property under the care, custody, and control of the CONTRACTOR.

1. General Aggregate (Except Products – Completed Operations) $5,000,000
2. Products – Completed Operations Aggregate $1,000,000
3. Personal and Advertising Injury (Per person/organization) $1,000,000

4. Each Occurrence (Bodily Injury and Property Damage) $3,000,000

5. Property Damage Liability Insurance will provide Explosion, Collapse, and Underground Coverage, where applicable $1,000,000

Automobile Liability:

1. Bodily Injury (each occurrence) $1,000,000

2. Property Damage – Statutory or combined single limit (each occurrence) $1,000,000

3. Combined Single Limit (Bodily Injury and Property Damage (each accident) $1,000,000

Contractor's Pollution Liability
1. Each Occurrence $1,000,000
2. General Aggregate $1,000,000

Other persons or entities (other than those already listed in the General Conditions) to be included on the policy as additional insured shall include:

1. Midvale City Corporation

2. Ensign Engineering and Land Surveying and its sub consultants

3. Other Engineering or testing groups employed by OWNER for work at the site or this project.

SC-5.04B7 Revise the third line of paragraph 5.04B.7 to read as follows:
"....for at least four years after..."

SC-5.04B Add a new paragraph as follows:
8. Contain a provision or endorsement that the covereage's and limits afforded will apply exclusively to claims which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it si performed or furnished by Contractor, or a subcontractor, Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone else for whose acts any of them may be liable.

SC-5.05 The Contractual Liability coverage required in paragraph 5.05 shall provide coverage for not less than the following amounts:

General Aggregate:	$5,000,000
Each Occurrence (Bodily Injury and Property Damage)	$3,000,000

SC-5.06 Delete paragraph 5.06 in its entirety, and insert the following in its place:

A. Contractor shall purchase and maintain property insurance upon Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplemental Conditions or required by Laws and Regulations). This insurance shall:

1. Include the interests of OWNER, Contractor, subcontractors, and any other persons or entities identified in the Supplemental Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;.
2. Builder's Risk, special peril, or risk of loss ppolicy form that shall at least include insurance for phpysical loss and damage to the Work, temporary buildings, false work and Work in transit is not required;
3. Include expenses incurred in the repair of replacement or any insured property (including, but not limited to fees and charegs of engineers and architect);.
4. Cover materials and equipment in transit for incorporation in the Work, or stored at the site or at another loction that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the Engineer; and
5. Be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, Contractor, and Engineer with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. The policies of insurance to be purchased and maintained by Contractor in accordance with this paragraph shall comply with the requirements of 5.08.

SC-6.01B Add a new sentence to the end of paragraph 6.01B as follows:

"If, during the performance of the Work, the OWNER determines that the Contractor has provided an incompetent resident superintendent, the OWNER shall notify the Contractor in writing, and the Contractor shall replace the resident superintendent within (7) seven days with a competent resident superintendent.

SC-6.06B Add a new paragraph to the end of paragraph 6.06Bm as follows:

1. CONTRACTOR shall not be permitted, without the express written authorization of the OWNER, to subcontract more than 50% of the CONTRACTOR's Work. Said percentage shall be computed by dividing the summation of the total cost for all subcontracted Work by the

CONTRACTOR's price, or the summation of all of the total man-hours for all subcontracted WORK by the total CONTRACTOR'S man-hours, whichever is less.

2. The CONTRACTOR shall not be permitted, without the express written permission of OWNER, to subcontract more than thirty percent (30%) of the CONTRACTOR'S Work to any one subcontractor. Said percentage shall be computed by dividing subcontractor's total cost by the CONTRACTOR'S total contract price, or by dividing subcontractor's total man-hours by the CONTRACTOR'S total man-hours, whichever is less.

SC-6.08A **Delete** the first sentence of paragraph 6.08A, and substitute the following sentence:

Unless otherwise provided for in Section 01005, Administrative Provisions, Contractor shall obtain and pay for all construction permits and licenses required by law or ordinance.

SC-19A **Revise** paragraph 6.19A to read as follows:

A. Contractor warrants and guarantees to.....and will not be defective. The warranty period will be for a minimum of two (2) years, beginning at the date of final acceptance of the WORK, each year. Contractor's warranty and guarantee hereunder excludes defects of damage caused by:

SC-6.20A **Delete** paragraph 6.20A in its entirety and insert the following in its place:

A. To the fullest extent permitted by Law or Regulation, the Contractor shall indemnify hold harmless, and defend the OWNER, its agents, engineers, consultants, officers, employees, volunteers, and each of them (hereinafter referred individually and collectively as the "Indemnitees") from and against any and all liability claims, damages, injury, of any kind, or nature whatsoever (including death) and cost of defense to any person or property (including, without limitation, claims for injury to or death to any employees of Contractor, subcontractor, or Supplier) which result from, arise out of, or occur in connection with the execution of the WORK, whether or not such claims are based upon actual or alleged active or passive negligence or wrongdoing of any Indemnitee, except the Contractor shall not be required to indemnify an Indemnitee against a claim or loss that is the result of the Indemnitee's sole negligence or willful conduct. Contractor shall indemnify Indemnitees from and against all loss, cost, expense, liability, damage, or injury, including legal fees, that Indemnitee may directly or indirectly sustain, suffer or incur as a result thereof, and the Contractor agrees to and does hereby assume on behalf of Indemnitees the defense of any action at law of inequity which

may be brought against Indemnitees by reason of such claim, and will pay on behalf of Indemnitees, upon their demand, the amount of any judgment that may be entered against Indemnitees or any of them in any such action. In the event that any such claims, loss, expenses, liability, damage or injury arise of, are made asserted to, or threatened against an Indemnitee for which the insurer of Contractor does not admit coverage, or if the OWNER deems such coverage to be inadequate, the OWNER shall have the right to withhold any payments due to or to become due to the Contractor, an amount sufficient to protect Indemnitees from such claims, loss, costs, expense, liability, damage, or injury, including legal fees. The Contractor will require any and all subcontractors and suppliers to conform with the provisions of this clause prior to commencing any WORK and agrees to insure this clause is in conformity with Article 5, Bonds and Insurance, herein.

SC-8.02 **Add** the following paragraph 8.02B:

B. Work on the project shall cease in such an event until a new ENGINEER is appointed and is on site.

SC-6.11.03C **Delete** paragraph 11.03C in its entirety, and insert the following in its place:

C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
   1. If the quantity of a particular item of Unit Price Work amounts to more than 200% above the estimated quantity indicated on the bid schedule; and
   2. If there is not corresponding adjustment with respect to any other item of Work; and
   3. If the CONTRACTOR believes that the CONTRACTOR has incurred additional expense as a result thereof; or, if OWNER believes that the quantity variation entitles OWNER to an adjustment in the unit price, either the OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price, in accordance with Article 11 if the parties are unable to agree as to the effect of any variation in the quantity of Unit Price Work performed.

SC-6.17.06 **Add** the following paragraph 14.06 to read as follows:

17.06 Survivability. If any provision or portion of the Contract Documents is held to be unconstitutional, invalid, or otherwise unenforceable, the rest of the Contract Documents shall remain in full force and effect, and shall in no way to affected, impaired, or invalidated. However, in such an event, the OWNER reserves the right at its sole option to declare the Contract

void and to enter into negotiations with the CONTRACTOR for a new Contract.

SC-7.10 LAWS AND REGULATIONS

Add the following paragraph to Article 7.10 - Laws and Regulations:

D. All Bidders are required to follow the requirements of Utah Code Annotated 63G-11-103 which prohibits the OWNER from entering into any contract for the performance of services with any successful bidder who does not first provide the OWNER with proof of registration and participation in a federally approved immigration status verification system to ensure that their employees are legally authorized to work in the United States. Failure to provide the required proof may be grounds for rejection of an otherwise successful bid. By submitting a bid in response to this RFB, CONTRACTOR certifies that it does not, and will not during the performance of this contract, knowingly employ, or subcontract with any entity which employs workers who are not legally authorized to work in the United States. CONTRACTOR agrees to require all its employees to provide proof of their eligibility to work in the United States and agrees to use all reasonable means to verify that proof. CONTRACTOR further agrees to require any subcontractors engaged to work on the project to sign a Certification of Legal Work Status and submit the Certificalion to the OWNER prior to any work being performed by the subcontractors. CONTRACTOR agrees to provide to the OWNER all documents necessary to verify compliance with applicable State and Federal immigration and labor laws. If CONTRACTOR knowingly employs workers or subcontractors in violation of 8 USC § 1324a, such violation shall be cause for unilateral cancellation of the contract between CONTRACTOR and OWNER. In addition, CONTRACTOR may be suspended from participating in future projects with the OWNER. In the event this contract is terminated due to a violation of 8 USC § 1324a by CONTRACTOR or a subcontractor of CONTRACTOR, CONTRACTOR shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the OWNER as well as attorney fees. For purposes of compliance, the OWNER requires CONTRACTOR and subcontractors to use an immigration status verification system such as E-Verify, or other approved system as outlined in Utah Code Annotated 63G-11- 103, to verify the employment eligibility of all employees. CONTRACTOR and subcontractors must maintain up to date documentation of the status verification system inquiry regarding each employee and must provide this information to the OWNER prior to beginning the project.

END OF SECTION

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01005

ADMINISTRATIVE PROVISIONS

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Title of Work, and type of Contract
B. Contractor Use of Premises
C. Owner-furnished Services
D. Alternates
E. Applications for Payment
F. Coordination
G. Field Engineering
H. Reference Standards

1.02 WORK COVERED BY CONTRACT DOCUMENTS

NOT USED

1.03 CONTRACT METHOD

A. Construct the work in its entirety under a single lump sum contract.

B. Items noted "NIC" (Not In Contract), will not be installed in this contract.

C. Adjustments to contract price will be made on the basis of g unit prices given in the Bid Schedule.

1.04 CONTRACTOR USE OF PREMISES

A. Notify the property owner and resident at least 48 hours prior to commencing any work on that property.

B. Limit construction operation to areas within the Construction Limits or Easement.

C. Limit access to site from public roads or other construction easement as shown. Do not enter private property to gain access to work area.

D. Coordinate use of premises under direction of Owner.

1.05 OWNER-FURNISHED SERVICES

A. Services furnished and paid for by Owner.
   1. Testing services.

B. Contractor's Responsibilities:
   1. Cooperate with Testing Laboratory in conducting field tests or in taking samples of materials. Excavate as required by Engineer for field destiny tests.
   2. Contractor shall pay all costs associated with setup, construction staking and file engineering required to complete the work.

1.06 APPLICATION FOR PAYMENT

A. In accordance with the General Conditions, submit applications for payment for review and approval.

B. Submit three copies of each application for payment under procedures of Section 01300 and in accordance with the General Conditions.

1.07 COORDINATION

A. Coordinate work of the various sections of specifications to assure efficient and orderly sequence of installation of construction elements, with provisions for accommodation items installed later.

B. Contractor is responsible to provided 48 hour notification to all residents and business affected by the work by door to door written notice.

1.08 FIELD ENGINEERING

A. Verify locations of all existing underground utilities and facilities and other items affecting the work and coordinate work with the owner of those utilities and other facilities. Call Blue- Stakes Location Services at least 48 hours before digging.

B. Provide field engineering services as required to establish grades, lines, and levels from construction stakes in order to complete the work in accordance with these drawings and specifications.

C. The locations of existing underground utilities depicted on the drawings are shown in an approximate way only. Determine the exact location of all existing utilities, whether or not shown on the drawings, before commencing work. Contractor agrees to be fully responsible for any and all damages which might be occasioned by his failure to exactly locate and preserve any and all underground utilities. If damaged or removed, the existing utility shall be restored or replaced by Contractor in as nearly the original condition and location as is reasonably possible.

D. Locate and protect survey reference lines, bench marks and monuments provided by the Owner for the control of the work.

E. If survey control lines and monuments are destroyed or altered as a consequence of construction, replace as directed, at no cost to the Owner.

1.09 REFERENCE STANDARDS

A. For products specified by association or trade standards, comply with requirements of standard, except when more rigid requirements are specified or are required by application codes.

B. The date of the standard is that in effect as of the Bid date, or date of Owner Contractor Agreement when there are no bids, except when a specific date is specified.

C. Obtain copies of standards when required by individual Specifications section. Maintain copy at jobsite during progress of the specific work.

D. Schedule of references:

ASHTO	American Association of State Highway and Transportation Officials 444 North Capitol Street, N.W. Washington, DC 20001
ACI	American Concrete Institute Box 19150 Redford Station Detroit, MI 48219
AGC	Associated General Contractors of America 1957 E Street, N.W. Washington, DC 20006
AI	Asphalt Institute Asphalt Institute Building College Park, MD 20740
AITC	American Institute of Timber Construction 333 W. Hampden Avenue Englewood, CO 80110
AISC	American Institute of Steel Construction 400 North Michigan Avenue Eighth Floor Chicago, IL 60611
AISI	American Iron and Steel Institute 1000 16th Street, N.W. Washington DC 20036
ANSI	American National Standards Institute 1430 Broadway New York, NY 10018
ASTM	American Society for Testing and Materials 100 Barr Harbor Drive Conshohocken, PA 19428-2959
AWWA	American Water Works Association 6666 West Quincy Avenue Denver, CO 80235
AWS	American Welding Society 550 LeJeune Road Miami, FL 33135

CLEMFI	Chain Link Fence Manufacturers Institute 1101 Connecticut Avenue, N.W. Washington, DC 20036
CRSI	Concrete Reinforcing Steel Institute 933 Plum Grove Road Schaumburg, IL 60195
EJCDC	Engineers' Joint Contract Documents Committee American Consulting Engineers Council 1050 15th Street, N.W. Washington, DC 20005
FS	Federal Specification General Services Administration Specifications and Consumer Information Distribution Section (WFSIS) Washington Navy Yard, Bldg. 197 Washington, DC 20407
NEMA	National Electrical Manufacturers' Association 2101 L Street, N.W. Washington, DC 20037
NFPA	National Fire Protection Association Battery March Park Quincy, MA 02269
UL	Underwriters' Laboratories, Inc. 333 Pfingston Road Northbrook, IL 60062

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Schedule of Values

B. Application for Payment

C. Unit Price Items

1.02 SCHEDULE OF VALUES

A. In accordance with article 2.6 of the General Conditions, submit schedule of values for items of work in project within 15 days of date of Contract for review and approval.

1.03 APPLICATION FOR PAYMENT

A. Submit three copies of each application for payment under procedures of Section 01300 on approved form in accordance with Article 14 of the General Conditions based on approved schedule of values.

1.04 LUMP SUM ITEMS

A. No separate measurement of quantities will be made for those items of work performed on a lump sum basis, but the item will be constructed, complete, as required to complete the work shown on the Drawings and as described in the Specifications.

B. Bid prices for lump sum items represent the total cost to the Owner. Such price shall constitute full compensation for furnishing and placing of materials required to complete the item, and for all labor, equipment, tools and incidentals needed to complete the work in conformity with the plans and specifications

1.05 UNIT PRICE ITEMS

A. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made in accordance with Article 9.10 of the General Conditions and in accordance with individual Sections of Specifications.

B. Payment will be for actual quantities and at the price stated in the Bid, Estimated quantities in the Bid are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Owner shall reserve the right to eliminate the work covered by any unit price bid item, should he decide it is in his best interest to do so. Contractor shall make no claim for anticipated profits or additional compensation for any elimination of unit price items.

C. Bid prices for unit price items represent the total cost to the Owner. Such price shall constitute full compensation for furnishing and placing of materials required to complete the item, and for all labor, equipment, tools and incidentals needed to complete the work in conformity with the plans and specifications.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 METHOD OF PAYMENT

1. **MOBILIZATION:** This item is to include bonding fees incurred by the contractor, if the total project cost were $750,000. Also include in this item any cost for a one-time mobilization fee.

   Payment to be made under: MOBILIZATION.....LS

2. **TYPE II SLURRY SEAL:** This item is to include the installation of a type II slurry seal coat applied to existing asphalt roadway surface, as prescribed in the Technical Specifications. Cost of this item shall include all tools, equipment, labor, materials, formwork, testing, curing, clean-up, fees, and all incidentals necessary to complete this work. Restoration of any existing improvements (where and if needed), is also included in this Work and at this price.

   Payment to be made under: Type II Slurry Seal..... .....SF

3. **CRACK SEAL:** This item shall include the cleaning of and placement of specialized materials in or above cracks in asphalt pavement to prevent the intrusion of incompressibles and water into the crack, as prescribed in APWA Technical Specifications, Division 32, Section 01, Subsection 17, Sealing Cracks in Asphalt Paving. Cost of this item shall include all tools, equipment, labor, materials, curing, clean-up, fees, and all incidentals necessary to complete this work. Restoration of any existing improvements (where and if needed), is also included in this Work and at this price.

   Payment to be made under: Crack Seal .....SF

4. **LANE STRIPING:** This item is to include the installation of lane striping up to 6" wide, according to MUTCD, Midvale City, and UDOT specifications. Payment shall be per lineal foot of paint installed on the asphalt. The cost of this item is also to include any surveying or marking required to match existing striping. The cost of this item to include all tools, materials, equipment, labor, formwork, testing, clean-up, fees, and incidentals necessary to complete this work.

   Payment to be made under: Striping .....LF

5. **MISC. PAVEMENT MARKINGS:** This item is to include the installation of miscellaneous pavement markings including traffic arrows, railroad crossing symbols, and stenciled words according to MUTCD, Midvale City, and UDOT specifications. The cost of this item is also to include any surveying or marking required to match existing markings. The cost of this item to include all tools, materials, equipment, labor, formwork, testing, clean-up, fees, and incidentals necessary to complete this work

   Payment to be made under: Misc. Pavement Markings.....EA

6. **STOP BARS/CROSS WALKS:** This item is to include the installation of stop bars and cross walk markings according to MUTCD, Midvale City, and UDOT specifications. The cost of this item is also to include any surveying or marking required to match existing striping. The cost of this item to include all tools, materials, equipment, labor, formwork, testing, clean-up, fees, and incidentals necessary to complete this work

   Payment to be made under: Stop Bars/CrossWalks.....SF

   ******All items shall include traffic control including necessary manpower, flagging, signage and other protective devices as required to expedite vehicular traffic flow on all roadway areas in a safe manner, as prescribed by the Manual on Uniform Traffic Control Devices, (MUTCD) latest edition. Cost of this shall include all tools, equipment, labor, materials, etc., necessary to flagging and toad signage, barricades, safety lights, and all required and necessary traffic control during any of these items shall be included in each item.

3.02 UNIT PRICES

The units stated in the Bid Schedule may vary from year to year.

END OF SECTION

SECTION 01300

SUBMITTALS

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Procedures
B. Shop Drawings
C. Product Data
D. Manufacturer's Instructions
E. Manufacturer's Certificates
F. Samples

1.02 RELATED REQUIREMENTS

A. Section 01005 - Administrative Provisions: Application for Payment
B. Section 01400 - Quality Control: Testing Laboratory Reports
C. Section 01400 – Quality Control: Manufactures' Field Service Reports
D. Section 01700 - Contract Closeout: Closeout Submittals

1.03 PROCEDURES

A. Deliver submittals to Engineer at:

Ensign Engineering
45 West 10000 South
Sandy, UT 84070

Attn: Kelly Chappell

B. Transmit each item under Engineer-accepted form. Identify Project, Contractor, subcontractor, major supplier; identify pertinent Drawing sheet and detail number, and Specification Section number, as appropriate. Identify deviations from Contract Documents. Provide space for Contractor and Engineer review stamps.

C. Submit initial progress schedules and schedule of values in duplicate at preconstruction conference. After review by engineer, revise and resubmit as required. Submit revised schedules with each application for payment, reflecting changes since previous submittal

D. Comply with progress schedule for submittals relayed to work progress. Coordinate submittal of relayed items.

E. After engineer review of submittal, revise and resubmit as required, identifying changes made since previous submittal.

F. Distribute copies of reviewed submittals to concerned persons. Instruct recipients to promptly report any inability to comply with provisions.

1.04 CONSTRUCTION PROGRESS SCHEDULES

A. Submit horizontal bar chart with separate bar for each major trade or operation, identifying first work day of each week.

B. Show complete sequence of construction by activity, identifying work separate stages and other logically grouped activated. Show projected percentage of completion for each item of Work as of time of each Application for Progress Payment.

C. Show submittal dates required for shop drawings, product data, and samples, and product delivery dates, including, if applicable, those furnished by Owner and those under Allowances.

1.05 SHOP DRAWINGS

A. Submit the number of opaque reproductions which contractor requires, plus two copies, which will be retained by Engineer.

1.06 PRODUCT DATA

A. Mark each copy to identify applicable products, models, options, and other data; supplement manufactures standard data to provide information unique to the Work.

B. Submit the number of copies, which Contractor requires, plus two copies, which will be retained by Engineer.

1.07 MANUFACTURER'S INSTRUCTIONS

A. When required in individual Specification Section, submit manufacturer's printed instruction for delivery, storage, assembly, installation adjusting, and finishing in quantities specified for product data.

1.08 MANUFACTURER'S CERTIFICATES

A. Provide certificates of compliance with specifications as required.

1.09 SAMPLES

A. Provide samples of materials as required by individual Specifications section.
B. Include identification on each sample, giving full information.
C. Submit the number specified in respective Specification section, one will be retained by Engineer.
D. Provide field samples of finishes at Project as required by individual Specifications section.

END OF SECTION

SECTION 01400

QUALITY CONTROL

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. General Quality Control

B. Workmanship

C. Manufacturer's Instructions

D. Manufacturer's Certificates

E. Manufacturer's Field Services

F. Testing Laboratory Services

1.02 RELATED REQUIREMENTS

A. Section 01005 -Administrative Provisions: Applicability of specified reference standards.

B. Section 01300 -Submittals: Shop Drawings, Product Data, and Manufacturer's Instructions

1.03 QUALITY CONTROL -GENERAL

A. Maintain quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce work of specified quality.

1.04 WORKMANSHIP

A. Comply with industry standards except when more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.

B. Perform work by persons qualified to produce workmanship of specified quality.

C. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, and racking.

1.05 MANUFACTURERS' INSTRUCTIONS

A. Comply with instructions in full detail, including each step in sequence. Should instructions conflict with Contract Documents, request clarification from Engineer before proceeding.

1.06 MANUFACTURERS' CERTIFICATES

A. When required by individual Specifications Section, submit manufacturer's certificate, in duplicate, that products meet or exceed specified requirements.

1.07 MANUFACTURERS' FIELD SERVICES

A. When specified in respective Specification Sections, require supplier to provide qualified personnel to observe field conditions and quality of workmanship as applicable, and to make appropriate recommendations.

B. Representative shall submit written report to Engineer listing observations and recommendations.

1.08 TESTING LABORATORY SERVICES

A. Contractor shall employ and pay for services of an Independent Testing Laboratory to perform inspections, tests, and other services required by individual Specification Sections.

B. Services will be performed in accordance with requirements of local jurisdiction having authority and with specified standards.

C. Reports will be submitted to Engineer in duplicate giving observations and results of tests, indicating compliance or non-compliance with specified standards and with Contract Documents.

D. Contractor shall cooperate with Testing Laboratory personnel; furnish tools, samples of materials, mix design, equipment, storage and assistance as requested.

1. Notify Engineer and Testing Laboratory 24 hours prior to expected time for operations requiring testing services.

2. Make arrangements with Testing Laboratory and pay for additional samples and tests for Contractor's convenience.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 01500

CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Temporary Utilities
B. Sanitary Facilities
C. Barriers and Enclosures
D. Protection of Installed Work
E. Dust, Water and Noise Control
F. Construction Cleaning
G. Project Identification
I. Traffic Regulation
J. Removal

1.02 RELATED REQUIREMENTS

A. Section 01005 – Administrative Provisions
B. Section 01700 – Contract Closeout: Final cleaning.

1.03 TEMPORARY UTILITIES

Not used.

1.04 SANITARY FACILITIES

A. Provide and maintain required facilities and enclosures.

1.05 BARRIERS AND ENCLOSURES

A. Provide as required to prevent public entry to construction areas to provide for Owner's use of site, and to protect existing facilities and adjacent properties from damage from construction operations.

B. Provide barricades as required by governing authorities for public rights-of-way and for public access to existing building(s).

1.06 PROTECTION OF INSTALLED WORK

A. Provide temporary protection for installed products. Control traffic in immediate area to minimize damage. Repair or replace at Owner's option any installed work damaged by traffic, the public, or Work operations.

B. Prohibit traffic on restored lawn and landscape areas.

1.07 DUST, WATER AND NOISE CONTROL

A. Surface Water, Erosion and Sediment Control:

1. Surface water shall be controlled so that the construction area is not allowed to become wet from runoff from adjacent areas. Surface water shall be directed away from these areas but not directed toward adjacent property, buildings, or any improvement that may be damaged by water. Surface water shall not be allowed to enter sanitary sewers.

2. Maintain excavations free of water. Provide and operate pumping equipment.

3. Prevent erosion and sedimentation.

4. Provide temporary measures such as berms, dikes, and drains, to prevent water flow.

B. Dust Control:

1. Dust control measures shall be implemented by application of water to all work areas, storage areas, haul and access roads, or other areas affected by construction.

2. All work shall be in compliance with the Federal, State, and local air pollution standards, and not cause a hazard or nuisance to personnel and the public in the vicinity of the work.

3. Provide and operate at least 1 mobile tank sprinkling unit or other positive means to prevent air-borne dust from dispersing into atmosphere.

4. Other methods of dust control for haul and access roads may include chemical treatment, light bituminous treatment or other method as approved by the Engineer.

5. Execute work by methods to minimize raising dust from construction operations.

C. Noise Control:

1. Execute construction between the hours of 8:00 A.M. and 5:00 P.M. unless otherwise approved by Owner.

1.08 CONSTRUCTION CLEANING

A. All public and private areas used as haul roads shall be continuously maintained and cleaned of all construction caused debris such as mud, sand, gravel, soils, pavement fragments, sod, etc. Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

B. Public roads shall be maintained in accordance with applicable ordinances and regulations.

C. Throughout all phases of construction, including suspension of work, and until final acceptance of the project, the Contractor shall keep the work site clean and shall remove daily all refuse, dirt, damaged materials, unusable materials, and all other trash or debris that he has created from his construction activities.

D. Materials and equipment shall be removed from the site as soon as they are no longer necessary; and upon completion of the work and before final inspection, the entire worksite shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included in the Contractor's Bid.

1.09 TRAFFIC REGULATION

A. Control vehicular parking to prevent interference with public traffic and parking, access by emergency vehicles, and Owner's operations.

B. Monitor parking of construction personnel's vehicles. Maintain vehicular access to and through parking areas.

C. Prevent parking on or adjacent to access roads or in non-designated areas.

D. Provide trained and equipped flagmen to regulate traffic when construction operations or traffic encroach on public traffic lanes. Provide control in accordance with local authority having jurisdiction.

E. Use flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.

F. Consult with authorities, establish public thoroughfares to be used for haul routes and site access.

G. Confine construction traffic to haul routes and designated construction limits.

H. Provide traffic control at critical areas of haul routes to regulate traffic, to minimize interference with public traffic.

I. At approaches to site and on site, install at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.

J. Relocate as Work progresses, to maintain effective traffic control.

K. Maintain traffic flow to private driveways during entire contract period.

L. Post-mounted traffic control and informational signs, traffic cones and drums, and flagman equipment as required and approved by local jurisdictions.

M. Where local jurisdictions have no requirements, construct and erect according to "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

N. Remove equipment and devices when no longer required. Repair damage caused by installation. Remove post settings to a depth of 3 feet.

1.10 REMOVAL

A. Remove temporary materials, equipment, services, and construction prior to Substantial Completion inspection.

PART 2 PRODUCTS

2.01 MATERIALS – GENERAL

A. New or used, suitable for the purpose.

2.02 FENCING MATERIALS

A. Optional

2.03 ENCLOSURE MATERIALS

A. For weather protection: Optional

2.04 SIGNS, SIGNALS, AND DEVICES

A. Optional

2.05 BARRICADES

A. Optional

PART 3 EXECUTION

3.01 TEMPORARY

A. Provide service required for construction operations.

3.02 BARRIERS AND ENCLOSURES

A. Provide to prevent public entry to work areas and to protect existing trees and plants. Provide as required to protect existing facilities, improvements and adjacent properties from damage from construction operations. Repair damage at no cost to the Owner.

B. Provide fence to enclose work area and to prevent workers or public from injuring themelves or causing damage to the work at the end of each working day.

C. Provide barricades as required by governing authorities for public rights of way and for public access to existing buildings.

D. Provide barriers around trees and plants designated to remain. Protect against vehicular traffic, stored materials, dumping chemically injurious materials, and puddling or continuous running water.

E. Provide protection against weather – rain, winds, storms, frost or heat, so as to maintain all work free from injury or damage. New work shall be cover if necessary.

3.03 SECURITY

A. Provide temporary protection for installed products. Control traffic in immediate area to minimize damage.

B. Prohibit traffic on lawn and landscaped areas.

3.04 TEMPORARY CONTROLS

A. Surface water, Erosion and sediment Control:

1. Surface water shall be controlled so that the construction area is not allowed to become wet from runoff from adjacent areas. Surface water shall be directed away from these areas but not directed toward adjacent property, buildings, or any improvement that may be damaged by water. Surface water shall not be allowed to enter sanitary sewers.

2. Maintain excavations free of water. Provide and operate pumping equipment.

3. Prevent erosion and sedimentation.

4. Provide temporary measures such as berms, dikes, and drains, to prevent water flow.

B. Construction Cleaning:

1. All public and private areas used as haul roads shall be continuously maintained and cleaned of all construction caused debris such as mud, sand, gravel, soils, pavement fragments, sod, etc. Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

2. Public roads shall be maintained in accordance with applicable ordinances and regulations.

3. Throughout all phases of construction, including suspension of work, and until final acceptance of the project, the Contractor shall keep the work site clean and shall remove daily all refuse, dirt, damaged materials, unusable materials, and all other trash debris that he has created from his construction actitivites.

4. Materials and equipment shall be removed from the site as soon as they are no longer necessary; amd upon completion of the work and before final inspection, so as to present a satisfactory clean and neat appearance. All celanup costs shall be included in the Contractor's Bid.

C. Dust Control:

1. Dust control measures shall be implemented by application of water to all work areas, storage area haul and access roads, or other areas affected by construction.

2. All work shall be in compliance with Federal, State, and local air pollution standards, and not cause a hazard or nuisance to personnel and the public in the vicinity of the work.

3. Provide positive means to prevent airborne dust from dispersing into the atmosphere.

4. Other methods of dust control for haul and access roads may include chemical treatment, light bituminous treatment or other method as approved by the Owner.

5. Execute work by methods to minimize raising dust from construction operations.

3.05 TRAFFIC REGULATION

A. Control vehicular parking to prevent interference with public traffic and parking, access by emergency vehicles, and Owner's operations.

B. Monitor parking of construction personnel's vehicles. Maintain vehicular access to and through parking areas.

C. Prevent parking on or adjacent to access roads or in non-designated areas.

D. Provide trained and equipped flagmen to regulate traffic when construction operations or traffic encroach on public traffic lanes. Provide control in accordance with local authority having jurisdiction.

E. Consult with authorities, establish public thoroughfares to be used for haul routes and site access.

F. Confine construction traffic to haul routes and designated construction limits.

G. Provide the Owner with 2 days notice of any road closure due to the construction activity.

END OF SECTION

SECTION 01600

MATERIAL AND EQUIPMENT

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Products
B. Transportation and Handling
C. Storage and Protection
D. Product Options
E. Products List
F. Substitutions

1.02 RELATED REQUIREMENTS

A. Section 01005 -Administrative Provisions: Warranties and Bonds
B. Section 01005 -Administrative Provisions: Reference Standards.
C. Section 01400 - Quality Control: Submittal of Manufacturers' Certificates
D. Section 01700- Contract Closeout: Operation and Maintenance Data

1.03 PRODUCTS

A. Products include all material, equipment and system.

B. Comply with Specifications and referenced standards as minimum requirements.

C. Components required to be supplied in quantity within a Specification section shall be the same, and shall be interchangeable.

D. Do not use products removed from an existing structure, pipeline, etc., except as specifically required, or allowed, by Contract Documents.

1.04 TRANSPORTATION AND HANDLING

A. Transport products by methods to avoid product damage; deliver in undamaged condition.
B. Provide equipment and personnel to handle products by methods to prevent damage.
C. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged.

1.05 STORAGE AND PROTECTION

A. Store products in accordance with manufacturer's instructions. Store sensitive products in weather-tight enclosures; maintain within temperature and humidity ranges required by manufacturer's instructions.

B. For exterior storage of fabricated products, place on sloped supports above ground. Cover products subject to deterioration with impervious sheet covering; provide ventilation to avoid condensation.

C. Store loose granular materials on solid surfaces in a well-drained area; prevent mixing with foreign matter.

D. Arrange storage to provide access for inspection. Periodically inspect to assure products are undamaged, and are maintained under required conditions.

1.06 PRODUCT OPTIONS

A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards.

B. Products Specified by Naming One or More Manufacturers with a Provision for Substitutions: Submit a request for substitution for any manufacturer not specifically name.

C. Products Specified by Naming Several Manufacturers: Products of named manufacturers meeting specifications: No options, no substitutions allowed.

D. Products Specified by Naming Only One Manufacturer: No options, no substitutions allowed.

1.07 PRODUCTS LIST

A. Within 15 days after date of Owner-Contractor Agreement, submit complete list of major products proposed for use, with name of manufacturer, trade name, and model number (if applicable) of each product.

1.08 SUBSTITUTIONS

A. Only within 15 days after date of Owner-Contractor Agreement established in Notice to Proceed will Engineer consider requests from Contractor for substitutions. Subsequently, substitutions will be considered only when a product becomes unavailable due to no fault of Contractor.

B. Document each request with complete data substantiating compliance of proposed substitution with Contract Documents.

C. Request constitutes a representation that Contractor:

1. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.

2. Will provide the same warranty for substitution as for specified product.

3. Will coordinate installation and make other changes which may be required for Work to be complete in all respects.

4. Waives claims for additional costs which may subsequently become apparent.

D. Substitutions will not be considered when they are indicated or implied on shop drawing or product data submittals without separate written request, or when acceptance will require substantial revision of Contract Documents.

E. The Engineer will determine acceptability of proposed substitution, and will notify Contractor of acceptance or rejection in writing within a reasonable time.

F. Only one request for substitution will be considered for each product. When substitution is not accepted, provide specified product.

PART 2 PRODUCTS
Not Used.

PART 3 EXECUTION
Not Used.

END OF SECTION

SECTION 01700

CONTRACT CLOSEOUT

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

A. Closeout Procedures
B. Final Cleaning
C. Project Record Documents
D. Warranties and Bonds

1.02 RELATED REQUIREMENTS

A. General Conditions: Substantial completion, fiscal provisions, legal submittals, and other administrative requirements.

B. Section 01500 – Construction Facilities and Temporary Controls: Cleaning During Construction.

1.03 CLOSEOUT PROCEDURES

A. Comply with procedures stated in General Conditions of the Contract for issuance of Certificate of Substantial Completion.

B. When Contractor considers Work has reached final completion, submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Architect/Engineer's review.

C. In addition to submittals required by the conditions of the Contract, provide submittals required by governing authorities, and submit a final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.

D. Owner will issue a final Change Order reflecting approved adjustments to Contract Sum not previously made be Change Order.

1.04 FINAL CLEANING

A. Execute prior to final inspection.

B. Clean site; sweep paved areas, rake clean other surfaces.

C. Remove waste and surplus materials, rubbish, and construction facilities from the Project and from the site. Owner will provide final cleaning after final acceptance.

1.05 PROJECT RECORD DOCUMENTS

Not used.

1.06 WARRANTIES AND BONDS

A. Comply with General Conditions and individual specification sections, and ordinances of local jurisdictions having authority.

B. Submit through Engineer, within ten days after acceptance, listing date of acceptance as start of warranty period.

C. The effective date of all guarantees shall be the date of final acceptance of the project by the Owner identified by the date of substantial completion inspection, unless an earlier date is agreed upon by all parties in writing.

D. Provide duplicate, notarized copies. Execute Contractor's submittals and assemble documents executed by subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

DIVISION 2 – SITEWORK

SECTION 02570

CRACK SEALING

PART 1 GENERAL

1.01 WORK INCLUDED

A. Preparation
B. Equipment
C. Temperature Control
D. Application
E. Protection

1.02 RELATED REQUIREMENTS

A. Section 02576 – Slurry Sealing

1.03 QUALITY ASSURANCE

A. All work shall be performed by experienced and qualified workmen with equipment standard with the industry.

B. No material shall be installed until approval has been given.

1.04 SUBMITTALS

A. Submit manufacturer's certificate of compliance for material.

1.05 METHOD OF MEASUREMENT AND BASIS FOR PAYMENT

A. Measurement will be made based on the linear footage of crack being sealed.

B. Payment will be determined by multiplying the linear footage of crack being sealed by the unit price given in the bid proposal. The price shall include all specialized equipment, materials, labor, tools, and other incidentals necessary to complete the work, including cleaning, brooming and sanding.

1.06 METHOD OF REPAIR RELATED TO CRACK WIDTH

A. For cracks narrower than 3/4", treat as Narrow Cracks as described below. For cracks wider than 3/4", treat as Mastic Seal as described in section 02571.

PART 2 PRODUCTS

2.01 MATERIAL

A. The sealing compound shall be a homogenous blend of materials combined in such a manner as to produce a material with the following properties.

Crack width	Narrow Cracks (<3/8")
Product	
Workability	The material shall pour readily over its specified application temperatures and penetrate a ¼ inch crack for the entire ambient temperature range recom-mended by the manufacturer for this application of this.
Flexibility	A (1/8" by 1" x 6") specimen of the product conditioned to 0° F shall be capable of being bent to a 90° angle over a 1.125" mandrel conditioned to 0° F in 2 seconds without cracking.
Curing	The product shall cure sufficiently within 45 minutes of application, over the manufacturer's recommended ambient temperature range for application, to allow normal traffic without cracking. (Same for Narrow and Wide Cracks)
Ductility	A standard specimen shall be capable of being pulled a minimum of 12 inches at 0.4 in/min. at 40° F. (Same for Narrow and Wide Cracks)

B. Sealant material shall be supplied pre-blended, pre-reacted and prepackaged. If supplied in solid form the blocks of completed material shall be cast in a plastic or other dissolvable liner having the capacity of becoming part of the crack sealing liquid. The sealant shall be delivered in the manufacturer's original sealed container. Each container shall be legibly marked with the manufacturer's name, the trade name of the sealer, the manufacturer's batch or lot number, the application temperature range, the recommended application temperature and the safe heating temperature.

PART 3 EXECUTION

3.01 PREPARATION

A. Identify locations of existing asphaltic concrete pavement cracks greater than ¼" in width.

B. Immediately prior to sealing such cracks, for at least six inches on both sides of the crack, clean foreign matter and loosened particles with an HCA (hot compressed air) heat lance. Adequate cleaning is determined by a darkening of the surface at least two inches in width, centered on the crack.

C. The heat lance shall meet the following requirements:

1. Temperature of the heated air at the exit orifice shall be a minimum of 2,800° F.

2. Velocity of the existing heated air shall be a minimum of 2,800 fps.
3. Direct flame dryers shall not be used.

3.02 EQUIPMENT

A. Sealant placement equipment shall use circulating hot oil heat transfer for heating the product. No direct heat transfer units shall be used. Maximum product tank capacity of the sealant placement equipment shall not exceed 500 gallons.

3.03 TEMPERATURE CONTROL

A. Sealant manufacturer's instructions on application temperature shall be observed. The Contractor's sealant unit shall have available at all times an operating ASTM 11-F thermometer with an intact mercury column or a certified, calibrated digital pyrometer, electronic thermometer, or equivalent direct reading temperature measurement device capable of reading within ±5° F. from 200° to 600° F,

B. Product tank temperatures shall be taken with one of the certified calibrated devices described. Temperature gauge readings are not acceptable.

C. Material shall not be placed if the temperature is below the manufacturer's recommended minimum application temperature.

D. Material that has been overheated in excess of 30° F. above the manufacturer's recommended maximum temperature for 1 hour or 60° F. for ½ hour shall be rejected and wasted at the Contractor's expense.

3.04 APPLICATION

A. Sealing shall be done only when the cracks are clean and dry and upon approval of the Owner.

B. Install crack sealant in a sufficient quantity to overfill the crack. Immediately squeegee the sealant remaining on the surface to form a sealant-bank. The squeegee shall be either attached to the wand or be kept within five feet of the sealant applicator at all times.

C. The sealant-bank shall be centered on the crack(s) and shall have the following configuration:

1. Extend ½" to 1" on either side of the crack(s) with a maximum width to cover two cracks (side by side) of 3".
2. Minimum thickness of 1/32" and maximum thickness of 3/32".
3. At least 90% of the band shall have a thickness of 1/16" ± 1/64".
4. A wipe zone flush with the pavement surface shall extend form ½" to 1" on either side of the band.

D. Fill cracks in excess of 1" in width with asphaltic concrete or as directed by the Owner.

3.05 PROTECTION

A. Where traffic or construction activities may cause tracking or pullout of the sealant material, sand the sealant as it is placed or as directed by the Owner.

B. Replace sealant material picked up or pulled out at no additional cost to the Owner. Any damage to the traveling public resulting from sealant application or sealant pullout shall be paid for by the Contractor.

* * * END OF SECTION * * *

SECTION 02576

ASPHALT SLURRY SEALING

PART 1 GENERAL

1.01 WORK INCLUDED

A. Contractor shall provide all materials, labor, tools, equipment, fees, permits, transportation, and other items required to furnish and install asphaltic concrete paving as indicated or as required to accomplish Work of other sections of these specifications. Asphaltic concrete overlay Work shall include, but not be limited to the following:

1. Preparation
2. Equipment
3. Application
4. Protection

1.02 RELATED REQUIREMENTS

A. Section 02504 – Asphalt Concrete Paving

1.03 REFERENCES

A. The applicable provisions of the latest editions of the References listed below shall govern the work covered under this section, unless there is a conflict between said References and the requirements of this Section. In the case of such a conflict, the requirements of this Section shall apply.

B. Utah Occupational Safety and Health Division (UOSHD)

C. American Association of State highway and Transportation Officials (AASHTO).

D. American Society for Testing and materials (ASTM).

E. State of Utah Standard Specifications for Road and Bridge Construction (UDOT).

F. Asphalt Institute (AI)

1.04 SUBMITTALS

A. Submittals shall include, but not be limited to the following:

1. Submit manufacturer's certificate of compliance for the material to be used. The test results from the product to be submitted shall conform to the requirements of ASTM D3910.

1.05 QUALITY ASSURANCE

A. Do not apply slurry seal coat if either the pavement or air temperature is below 55° F. and falling. It may be applied when both the air and pavement temperature is 55° F. and rising.

B. All work shall be performed by experienced and qualified workmen with equipment standard with the industry.

C. Approval by Engineer of sources of supply of materials shall be obtained prior to delivery of materials.

D. Comply with federal, state and/or local codes and regulations.

1.06 WARRANTY

A. The Contractor shall guarantee the materials and the workmanship furnished under this Contract to be as specified and to be free from defects for a period of 2 years after the date of final acceptance by the City. This warranty shall be extended to cover all repairs, replacements, adjustments or corrections furnished under the warranty. The period of the guarantee for each such repair, replacement, adjustment or correction shall be for a full 2 years from the date of acceptance by the City of the repair or correction..

1.07 METHOD OF MEASUREMENT AND BASIS FOR PAYMENT

A. Measurement shall be based on the square footage of slurry seal placed.

B. Payment will be made by multiplying the square footage of slurry seal having been applied by the unit price given in the bid proposal for that year. The price shall include all equipments, materials, labor, tools, and other incidentals necessary to complete the Work, including all clean-up.

PART 2 PRODUCTS

2.01 MATERIALS

A. ASPHALT EMULSION

1. The asphalt emulsion shall meet the current ASTM specifications for cationic emulsified asphalt grade CSS-1h (ASTM D 2397), anionic emulsified asphalt grade SS-1h (ASTM D 977) or quick setting asphalt emulsion (CQS).

2. Do not mix asphalt emulsion from different sources.

B. Aggregate and mineral filler:

1. The mineral aggregate shall consist of natural or manufactured sand, slag, crushed fines or a combination thereof. The aggregate shall be clean and free from vegetation and other deleterious matter and shall be compatible with the emulsified asphalt.

2. Smooth textured sand of less than 1.25 percent water absorption shall not exceed 50 percent of the total combined aggregate. The aggregate blend shall have a sand equivalent of not less than 45 when tested in accordance with ASTM D 2419.

3. The mineral filler shall be Portland cement, hydrated lime or other filler meeting requirements of ASTM D 242 and shall be considered as part of the blended aggregate. Filler shall only be used as needed to improve the workability of the mix or gradation of the aggregate.

4. Gradation of the combined aggregate and mineral filler shall be in accordance with the following:

Sieve Size	**Type I Percent Passing**	**Type II Percent Passing**	**Type III Percent Passing**
3/8	100	100	100
#4	90-100	90-100	70-90
#8	90-100	65-90	45-70
#16	65-90	45-70	28-50
#30	40-65	30-50	19-34
#50	25-42	18-30	12-25
#100	15-30	10-21	7-18
#200	10-20	5-15	5-15

5. Source quality control:

Quality	**Tolerance**	**Specification**
Cleanness	45 Min.	ASTM D 2419
Soundness	15% using Na2S04 or 20% using MgS04	ASTM C 88
Hardness	35% maximum	ASTM C 131

C. Water used with the slurry mixture shall be potable and free from harmful soluble salts.

2.02 SLURRY SEAL MIXTURE

A. Provide a slurry seal mixture which possesses sufficient stability so premature breaking of the slurry seal in the spreader box does not occur. The mixture shall be homogeneous during and following mixing and spreading, free of excess water or emulsion and free of segregation of the emulsion and aggregate fines from the coarser aggregate.

PART 3 EXECUTION

3.01 PREPARATION

A. Clear the surface of all loose material, mud spots, vegetation and other objectionable material immediately prior to applying the slurry. Any standard cleaning method used to clean pavements will be acceptable, with the exception that water flushing will not be allowed in those areas where considerable cracks are present in the pavement. Those areas which are severely cracked (cracks wider than 1/4') shall be cleaned and sealed prior to installing slurry seal as specified in Section 02570 - Crack Sealing.

B. Protect manholes, valve boxes, inlet boxes and other service entrances from the slurry application, If it is impractical to protect existing improvements during slurry application, clean those improvements not protected immediately following application.

C. When required by local conditions, pre-wet the surface by fogging ahead of the slurry spreader box. Do not allow water ponding on the roadway surface in front of the spreader box. Adjust rate of application of fog spray to suit temperatures, surface texture, humidity and dryness of the pavement surface.

3.02 EQUIPMENT

A. The equipment shall be designed specifically for the blending, mixture and placing of 'Slurry Seal" similar and/or equal to the #804 Young Continuous Mix Slurry Machine, capable of producing a satisfactory finished product.

1. The slurry mixing machine shall be a continuous flow mixing unit capable of distributing an accurate, predetermined proportion of aggregate, water, and asphalt emulsion to the mixing chamber and discharging a thoroughly mixed product on a continuous basis. The mixing unit shall be capable of blending all slurry ingredients together. No violent mixing shall be permitted. The mixer shall be equipped with a calibrated feeder used to provide an accurate metering and delivery of mineral filler into the mixer in conjunction with the aggregate feed. This feeder shall be used whenever

fines or mineral fillers are required in the slurry.

2. Attached to the mixing machine shall be a mechanical type squeegee distributor equipped with a flexible material in contact with the surface to prevent loss of slurry from the distributor. It shall be maintained so as to prevent loss of slurry on carrying grades and crown by adjustments to assure uniform spread. There shall be a steering device and a flexible strike- The spreader box shall have an adjustable width. The box shall be kept clean from the build-up of asphalt and aggregate. Maintain a completely flexible drag at all times.

3. The mixing machine shall be equipped with a water pressure system and a fog type spraybar adequate for completely fogging the surface immediately ahead of the spreading equipment.

4. Power brooms, power blowers, air compressors, water flushing equipment and hand brooms shall be suitable for cleaning out cracks and foreign material off the surface of the pavement to be slurried.

3.03 APPLICATION

A. If it is required to pre-wet the surface by fogging ahead of the slurry box, water shall be applied at a rate of 0.02 to 0.05 gals/sy. No free water shall be on the surface of the pavement in front of the slurry box. The slurry mixture shall be of the desired consistency upon deposit on the surface and no additional elements shall be added. Total time of mixing shall not exceed four (4) minutes. A sufficient amount of slurry shall be carried in all parts of the spreader at all times so that a complete coverage is obtained. Overloading of the spreader shall be avoided. No lumping, balling or unmixed aggregate shall be permitted. No segregation of the emulsion and aggregate fines from the course aggregate shall be permitted. If the coarse aggregate settles to the bottom of the mix, the slurry shall be removed from the pavement. No excessive breaking of emulsion shall be allowed in the spreader box. No streaks, such as those caused by oversized aggregate will be left in the finished pavement.

B. Install slurry seal in sufficient thickness to exceed the largest aggregate size and not less than the following minimum rates of application:

1.	Type I Slurry Seal	8 pounds per square yard min.
2.	Type II Slurry Seal	13 pounds per square yard min.
3.	Type III Slurry Seal	17 pounds per square yard min.

C. Provide suitable width spreading equipment to produce a minimum number of longitudinal joints. When possible, place longitudinal joints on lane lines. Use half passes and odd width passes only in minimum amount. If half passes are

used, they shall not be the last pass of any paved area. Avoid excessive buildup of joints. Do not permit joints to be uncovered or have an unsightly longitudinal or transverse joint appearance.

D. Slurry seal placed adjacent to concrete pavements or concrete curb and gutter shall be placed with a straight longitudinal edge. All edges shall be straight and neat in appearance.

E. Use hand squeegees to provide complete and uniform slurry seal coverages in areas which cannot be reached with the slurry seal machine. Exercise care to leave no unsightly appearance from handwork. Provide same type finish as applied by the spreader box.

F. Provide a slurry seal which fills all cracks, adheres firmly to the surface, has a homogeneous appearance and a skid resistance texture.

3.04 PROTECTION

A. Protect all structures, including curb and gutter, sidewalk, guard rails and guard posts from being splattered or damaged. If any splattering, over-coating, or marring occurs, correct such at no expense to the Owner. Insure straight lines along lips of gutters and shoulders. Lines at intersections shall be kept straight to provide neat appearance.

B. Repair any damage caused by construction.

3.05 TRAFFIC CONTROL

A. Suitable methods of traffic control shall be used to protect the uncured slurry surface from all types of traffic. Traffic control shall be provided by the Contractor as required by M.U.T.C.D. My damage to the uncured slurry will be the responsibility of the Contractor and shall be repaired by a method approved by the Engineer. Clean up slurry seal material which is tracked outside the area of application.

B. Treated areas will be allowed to cure until such time as the Engineer permits their opening to traffic.

END OF SECTION

SECTION 02590

RESTORATION OF EXISTING IMPROVEMENTS

PART 1 GENERAL

1.01 WORK INCLUDED

A. Construction or repair of fences, driveways, walls, landscaping, roadways, curbs, sprinkler systems, walks or any other structure or improvement (surface or sub surface) removed or damaged pursuant to completing the contract requirements.

1.02 QUALITY ASSURANCE

A. Use adequate numbers of skilled workmen who are trained and experienced in the type of construction required.

B. The quality of the finished restored improvement, as determined by the Owner, shall be of equal or better quality than was said improvement prior to being damaged or removed.

PART 2 PRODUCTS

2.01 MATERIALS – GENERAL

A. As required to complete the restoration of existing improvements, and shall be at least equal to original improvement at the time of damage or removal, as determined by the owner of said improvement, and shall match original construction in finish and dimension.

B. Shall be in accordance with requirements of local jurisdiction having authority. Obtain approval of all materials from local jurisdiction having authority prior to ordering or delivering.

PART 3 EXECUTION

3.01 PREPARATION

A. Obtain all permits necessary for the restoration of existing surface improvements.

B. Protect all public and private property adjacent to the work. Exercise due caution to avoid damage to such property.

3.02 GENERAL RESTORATION REQUIREMENTS

A. All improvements damaged or removed shall be restored in accordance with local jurisdiction having authority. In case of conflict between these specifications and local authority specifications, the local authority shall govern.

B. Repair or replace all existing surface improvements, which were damaged or removed as a result of operations of work under this contract. Restoration shall be of at least equal quality and identical in dimension to original improvement unless specifically specified otherwise.

END OF SECTION