

PROJECT MANUAL
TOWN OF MOORCROFT
**SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM
NORTH OF CONVERSE STREET TO RAILROAD STREET**

FOR
TOWN OF MOORCROFT
STEVE BLAKEMAN - MAYOR

COUNCIL MEMBERS:

FRED DEVISH
BEN GLENN
DALE PETERSEN
JIM REXFORD

DAN BLAKEMAN – TOWN ADMINISTRATOR
TARA FERRELL – TOWN CLERK/TREASURER

JANUARY 2012

BY
STETSON ENGINEERING, INC.
P.O. BOX 457
601 Metz Drive
GILLETTE, WYOMING 82717

Project No. 11.005



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ADVERTISEMENT AND INVITATION FOR BIDS
TOWN OF MOORCROFT

NOTICE IS HEREBY GIVEN THAT SEPARATE SEALED BIDS FOR THE FURNISHING OF:

***TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM
NORTH OF CONVERSE STREET TO RAILROAD STREET
PROJECT NO. 11.005***

WILL BE RECEIVED BY THE TOWN OF MOORCROFT, WYOMING, AT THE TOWN HALL, 104 NORTH BIG HORN AVE., MOORCROFT, WYOMING 82721, UNTIL THE FOLLOWING TIME AND DATE, AND THEN PUBLICLY OPENED AND READ ALOUD:

3:00 P.M., February 8, 2012

PURSUANT TO W.S. 16-6-106, "PREFERENCE IS HEREBY GIVEN TO MATERIALS, SUPPLIES, AGRICULTURAL PRODUCTS, EQUIPMENT, MACHINERY AND PROVISIONS PRODUCED, MANUFACTURED, SUPPLIED OR GROWN IN WYOMING, QUALITY BEING EQUAL TO ARTICLES OFFERED BY THE COMPETITORS OUTSIDE THE STATE".

THE CONTRACT DOCUMENTS MAY BE EXAMINED AT THE FOLLOWING LOCATIONS:

1. TOWN OF MOORCROFT, TOWN HALL
104 NORTH BIG HORN AVE.
PO Box 70
MOORCROFT, WYOMING 82721
2. STETSON ENGINEERING, INC.
601 METZ DRIVE
GILLETTE, WYOMING 82717
3. NORTHEASTERN WYOMING CONTRACTORS PLAN SERVICE
314 SOUTH GILLETTE AVENUE
GILLETTE, WY 82716
4. BID CENTER
800 EAST A STREET
CASPER, WY 82601
5. CONSTRUCTION INDUSTRY CENTER
2771 PLANT STREET
RAPID CITY, SD 57702
6. BUILDERS EXCHANGE OF BILLINGS
2050 BROADWATER AVENUE, SUITE A
BILLINGS, MT 59102

COPIES OF THE CONTRACT DOCUMENTS MAY BE OBTAINED IN A PDF FORMAT FROM THE STETSON ENGINEERING, INC WEB SITE AT, "www.stetsonengineeringinc.com".

A PRE-BID MEETING IS SCHEDULED FOR **3:00 P.M. ON January 31, 2012**, AT THE MOORCROFT TOWN HALL. BIDDERS ARE **ENCOURAGED** TO ATTEND AND PARTICIPATE IN THE MEETING.

BIDS MUST BE MARKED:

***TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM
NORTH OF CONVERSE STREET TO RAILROAD STREET
PROJECT NO. 11.005***

THE TOWN OF MOORCROFT RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

TOWN OF MOORCROFT, A MUNICIPAL CORPORATION

STEVE BLAKEMAN

(MAYOR)

January 17, 2012

(DATE)

PUBLISH: January 19, 2012
 January 26, 2012
 February 2, 2012

INSTRUCTIONS TO BIDDERS

ARTICLE 1 -- DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders, which are defined in the General Conditions of the Construction Contract, have the meanings assigned to them in the General Conditions.
- A. Bidder: The term "Bidder" means one who submits a Bid directly to the Owner, as distinct from a sub-bidder, who submits a bid to a Bidder.
 - B. Successful Bidder: The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom the Owner, (on the basis of the Owner's evaluation as hereinafter provided), makes an award.
 - C. Bidding Documents: The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents, (including all Addenda issued prior to receipt of Bids).
 - D. Issuing Office: The Purchasing Office from which the Bidding Documents are to be issued prior to receipt of Bids.

ARTICLE 2 -- COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents stated in the Invitation to Bid may be obtained from the Stetson Engineering, Inc. web site at www.stetsonengineeringinc.com.
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids. Neither the Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 The Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work, and do not confer a license or grant for any other use.

ARTICLE 3 -- QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate qualifications to perform the Work, within five (5) days of the Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments and other such data, as may be called for below.
- A. Successful Bidder submits to the Owner evidence of the Bidder's qualifications to do business in the state of Wyoming, prior to Notice of Award.

- B. Successful Bidder submits to Owner a list of all Subcontractors, Suppliers and others who must be identified for acceptance by Owner and Engineer prior to Notice of Award.

ARTICLE 4 -- EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA AND SITE

4.01 Subsurface and Physical Conditions

- A. The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site, which have been utilized by the Engineer in preparation of the Bidding Documents.
 - 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures, at or contiguous to the Site (except Underground Facilities), which have been utilized by the Engineer in preparation of the Bidding Documents.
- B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by the Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraphs 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretations or conclusions Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents, with respect to existing Underground Facilities at or contiguous to the Site, is based upon information and data furnished to the Owner and Engineer by owners of such Underground Facilities including Owner or others.

4.03 Hazardous Environmental Conditions

- A. The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site, which have been utilized by the Engineer in preparation of the Bidding Documents.
 - 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures, at or contiguous to the Site (except Underground Facilities), which have been utilized by the Engineer in preparation of the Bidding Documents.

- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by the Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraphs 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretations or conclusions Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.
- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents, due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03 and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawing or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.
- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests and studies, as Bidder deems necessary, for submission of a Bid. Bidder shall fill and compact all holes, clean up, and restore the site to its former conditions upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
 - B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;

- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions;
 - E. obtain and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedure of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 - F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that

Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 5 -- PREBID CONFERENCE

- 5.01 A pre-bid conference will be held at, **3:00 P.M. ON January 31, 2012** at the **Moorcroft Town Hall**.
- 5.02 Representatives of the Owner and Engineer will be present to discuss the Project. Bidders are **encouraged** to attend and participate in the conference. The Engineer will post to the Stetson Engineering, Inc. website, such Addenda, as the Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work is to be obtained and paid for by Contractor.

ARTICLE 7 -- INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to the Engineer in writing. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by Addenda posted to the Stetson Engineering, Inc. website. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents, as deemed advisable by the Owner or Engineer.

ARTICLE 8 -- BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to the Owner in the amount of five percent of Bidder's maximum Bid price and in the form of a Bid Bond issued by a surety meeting the requirements of paragraph 5.01 and 5.02 of the General Conditions. The form of Bid Bond attached complies with the requirements of State Law and is recommended, but is not mandatory. All Bid Bonds submitted shall be conclusively presumed to conform to all the requirements of State law, and shall include the obligations specified under Section 15-1-113(f) of the Wyoming

Statutes, even though not expressly written into the Bid Bond. All Bidders shall be liable for compliance with this section if it is not enforceable against their bonding company or surety.

- 8.02 The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within thirty (30) days after the Notice of Award and the Bid Security of the Bidder will be forfeited.

The Bid Security of other Bidders whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until the earlier of the seven days after the Effective Date of the Agreement, or sixty (60) days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven (7) days after the Bid Opening.

ARTICLE 9 -- CONTRACT TIME

- 9.01 The numbers of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment, are set forth in the Bid Form and the Agreement.

ARTICLE 10 -- LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 -- SUBSTITUTE OR "OR-EQUAL" ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents or those in the substitute or "or-equal" materials and equipment approved by Engineer, and identified by Addendum. The materials and equipment described in the Bidding Documents established a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Engineer as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer at least fifteen (15) days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approval made in any other manner.

ARTICLE 12 -- WYOMING PREFERENCE, SUBCONTRACTORS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractor, Supplier, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer make no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner or Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.
- 12.04 A 5% preferential treatment shall be given to all Bids submitted by Wyoming Bidders, except when the funding source for the project does not allow. The Contract shall be let to the responsible Wyoming resident making the lowest Bid; if, after adding 5% to the lowest responsible non-resident's Bid, the Wyoming residents Bid is less. Wyoming Bidders shall attach a copy of their Certificate of Residency to their bid.
- 12.05 A successful resident Bidder shall not subcontract more than thirty Percent (30%) of the work covered by his Contract to non-resident Contractors.
- 12.06 Definitions.
- (i) "Laborer" means a person employed to perform unskilled or skilled manual labor for wages in any capacity and does not include independent contractors;
 - (ii) "Resident" means a person, partnership, limited partnership, registered limited partnership, registered limited liability company or corporation certified as a resident by the Department of Employment prior to bidding upon the Contract and meeting the further criteria in W.S. 16-6-101, et seq. A resident bidder shall submit a copy of its certificate of residency with its bid.

- (iii) "Wages" means a payment of money for labor or services according to a contract or any hourly, daily or piece-work basis;
- (iv) "This act" means W.S. 16-6-201 through 16-6-206. (Laws 1971, ch. 207, 2; W.S. 1957, 9-680.2; W.S. 1977, 9-8-402; Laws 1982, ch. 62, 3. Laws 1983, ch. 125, 1.)

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents: Additional copies may be obtained from the Stetson Engineering, Inc. website.
- 13.02 All blanks on the Bid Form must be completed by printing in ink or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item] listed therein, or the word "No Bid," "No Change," or "Not Applicable" entered.
- 13.03 Bids by corporations shall be executed in the corporate name by the president or vice-president, or other corporate officer accompanied by evidence of authority to sign. The corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 13.04 Bids by partnerships must be executed in the partnership name, and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 All names must be typed or printed below the signature.
- 13.08 The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 13.09 The address and telephone number for communications regarding the Bid must be shown.
- 13.10 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BIDS

15.01 Complete sets of the Bidding Documents may be obtained from the Stetson Engineering, Inc. web site at www.stetsonengineeringinc.com. With each set of the Bidding Documents, a Bidder is furnished one copy of the Bid Form, and, if required, the Bid Bond Form. A copy of the Bid Form is to be completed and submitted with the Bid Security.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If the Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED".

15.03 The following forms and items require execution and submission with the bid:

- A. Required Bid Security in the form of a Bid Bond
- B. Copy of Certificate of Residency, if bidding as a resident.

ARTICLE 16 -- MODIFICATION AND WITHDRAWAL OF BIDS

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

ARTICLE 17 -- OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 -- BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All bids will remain subject to acceptance for the period of time stated in the Bid Form, but the Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any and all Bids, including without limitations, nonconforming, non-responsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or change in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. The Owner will consider Bids irregular, and intends to reject them for any of the following substantial reasons:
- A. Bid Proposal not received prior to the specified deadline.
 - B. Unsigned Bid Proposals.
 - C. Bid Proposals which have items omitted by the Bidder.
 - D. Post Bid monetary modification of Bid Proposals due to provable mistakes of fact.
 - E. Post bid refusal to submit to specified bidding requirements, such as: MBE requirements, Subcontractor listing, etc.

- F. Altering a Bid as to specified time of commencement or completion of Work.
- G. Bid Proposal not accompanied by a security of character indicated or of an amount less than indicated.
- H. If the Bid Proposal is on a form other than that furnished by the Owner, or if the form is altered.
- I. If there are unauthorized additions, conditional, or alternate Bids, or discrepancies of any kind which may tend to make the Bid Proposal incomplete, indefinite, or ambiguous as to its' meaning.
- J. If the Bidder adds any provisions, reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award.
- K. If the Bid Proposal does not contain a unit price for each pay item listed.
- L. If the Bid Proposal contains any erasure or alteration of written words or figures of unit prices not initialed in ink by the Bidder.
- M. Submitting more than one Bid.

The Owner will consider Bids informal, but does not intend to reject them for the following minor reasons:

- A. Omission of dates when signed or title of person signing.
- B. Failure to acknowledge an addendum, which does not affect quantity, quality, time, or price.
- C. Submission of a Bid in an unsealed envelope.
- D. Unit price Bid Proposals that include reconcilable arithmetic errors may be corrected if it does not change the unit price.
- E. Lump sum Bid Proposals which include reconcilable arithmetic errors may be corrected, if it does not change the amount on which the award will be based.

19.04 In evaluating Bidders, Owner may consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions. The Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers, and other individuals or entities to perform Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award to Bidder whose bid is in the best interests of the Project.

ARTICLE 20 -- CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the successful Bidder delivers the executed Agreement to the Owner, it shall be accompanied by such bonds and insurance.

ARTICLE 21 -- SIGNING OF AGREEMENT

- 21.01 When the Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with all other Contract Documents. Within thirty (30) days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten (10) days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder and a complete set of the Drawings with appropriate identification.

ARTICLE 22 -- SALES AND USE TAXES

- 22.01 The Contractor must pay all State Sales and Use Tax on materials and equipment to be incorporated in the Work.

ARTICLE 23 -- RETAINAGE

- 23.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

BID FORM

TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM NORTH OF CONVERSE STREET TO RAILROAD STREET

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Town of Moorcroft
104 South Big Horn Avenue
PO Box 70
Moorcroft, Wyoming 82721

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the price, and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 The Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) days after the day of the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents:

A. The Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____

B. The Bidder has visited the Site, and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Law and Regulations that may affect cost, progress and performance of the Work.

- D. Bidder has carefully studied all: (1) reports of explorations and test of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 Supplementary Conditions and (2) reports and drawings of Hazardous Environmental Conditions that have been identified in Paragraph 4.06 Supplementary Conditions.
- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so), all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of the Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, report and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which the Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. This bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

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ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following prices(s):

**TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM NORTH OF CONVERSE STREET TO RAILROAD STREET
PROJECT NO. 11.005**

SCHEDULE A – OPEN TRENCH CONSTRUCTION					
PAY ITEM	PAY ITEM DESCRIPTION	UNIT	QTY FOR BID	UNIT PRICE (\$)	TOTAL PRICE (\$)
1	MOBILIZATION	LS	1	\$	\$
2	CONTRACT BOND	LS	1	\$	\$
3	FORCE ACCOUNT	FA	1	\$ 35,000.00	\$ 35,000.00
4	CONSTRUCTION SIGNING AND TRAFFIC CONTROL	LS	1	\$	\$
5	REMOVE SANITARY SEWER MAIN	LF	1020	\$	\$
6	REMOVE SANITARY SEWER MANHOLE	EA	3	\$	\$
7	ABANDON SANITARY SEWER MANHOLE IN PLACE	EA	1	\$	\$
8	REMOVE AND REPLACE ASPHALT PAVEMENT	SY	350	\$	\$
9	REMOVE AND REPLACE 4" CONCRETE SIDEWALK	SF	100	\$	\$
10	REMOVE AND REPLACE CURB & GUTTER	LF	120	\$	\$
11	REPLACE GRAVEL ROAD SURFACE	SY	1750	\$	\$
12	REMOVE AND REPLACE CHAINLINK FENCE	LF	100	\$	\$
13	REMOVE AND REPLACE WOOD FENCE	LF	20	\$	\$
14	REMOVE AND REPLACE SMOOTH WIRE FENCE	LF	15	\$	\$
15	REMOVE AND REPLACE RAILROAD TIE RETAINING WALL	LF	30	\$	\$
16	UTILITY LINE CROSSING	EA	105	\$	\$
17	INSTALL TYPE 2 BEDDING	CY	50	\$	\$
18	INSTALL 8" SANITARY SEWER	LF	1020	\$	\$
19	INSTALL 8" SANITARY SEWER PIPE BURST	LF	100	\$	\$
20	INSTALL BASIC SANITARY SEWER MANHOLE (8' DEPTH)	EA	4	\$	\$
21	INSTALL ADDITIONAL SANITARY SEWER MANHOLE DEPTH	VF	15	\$	\$
22	CONNECT TO EXISTING SANITARY SEWER MAIN	EA	2	\$	\$
23	CONNECT TO EXISTING SANITARY SEWER MANHOLE	EA	1	\$	\$
24	RECONNECT EXISTING SANITARY SEWER SERVICE	EA	34	\$	\$
25	INSTALL 4" SANITARY SEWER SERVICE	LF	550	\$	\$
26	INSTALL 6" SANITARY SEWER SERVICE	LF	10	\$	\$
27	INSTALL 4" SANITARY SEWER SERVICE CLEANOUT	EA	2	\$	\$
28	INSTALL 6" SANITARY SEWER SERVICE PIPE CLEANOUT	EA	2	\$	\$
29	ABANDON EXISTING SANITARY SEWER SERVICE IN PLACE	EA	2	\$	\$
30	REMOVE AND REPLACE TOP SOIL	SY	470	\$	\$
31	SEEDING	SF	6000	\$	\$

Schedule A Total Bid \$ _____

Total in words \$ _____

SCHEDULE B – PIPE BURST CONSTRUCTION					
PAY ITEM	PAY ITEM DESCRIPTION	UNIT	QTY FOR BID	UNIT PRICE (\$)	TOTAL PRICE (\$)
32	MOBILIZATION	LS	1	\$	\$
33	CONTRACT BOND	LS	1	\$	\$
34	FORCE ACCOUNT	FA	1	\$ 35,000.00	\$ 35,000.00
35	CONSTRUCTION SIGNING AND TRAFFIC CONTROL	LS	1	\$	\$
36	REMOVE SANITARY SEWER MAIN	LF	100		
37	REMOVE SANITARY SEWER MANHOLE	EA	3	\$	\$
38	ABANDON SANITARY SEWER MANHOLE IN PLACE	EA	1	\$	\$
39	REMOVE AND REPLACE ASPHALT PAVEMENT	SY	350	\$	\$
40	REMOVE AND REPLACE 4" CONCRETE SIDEWALK	SF	100	\$	\$
41	REMOVE AND REPLACE CURB & GUTTER	LF	120	\$	\$
42	REPLACE GRAVEL ROAD SURFACE	SY	1750	\$	\$
43	REMOVE AND REPLACE CHAINLINK FENCE	LF	100	\$	\$
44	REMOVE AND REPLACE WOOD FENCE	LF	20	\$	\$
45	REMOVE AND REPLACE SMOOTH WIRE FENCE	LF	15	\$	\$
46	REMOVE AND REPLACE RAILROAD TIE RETAINING WALL	LF	30	\$	\$
47	UTILITY LINE CROSSING	EA	61	\$	\$
48	INSTALL TYPE 2 BEDDING	CY	50	\$	\$
49	INSTALL 8" SANITARY SEWER	LF	100	\$	\$
50	INSTALL 8" SANITARY SEWER PIPE BURST	LF	1120	\$	\$
51	INSTALL BASIC SANITARY SEWER MANHOLE (8' DEPTH)	EA	4	\$	\$
52	INSTALL ADDITIONAL SANITARY SEWER MANHOLE DEPTH	VF	15	\$	\$
53	CONNECT TO EXISTING SANITARY SEWER MAIN	EA	2	\$	\$
54	CONNECT TO EXISTING SANITARY SEWER MANHOLE	EA	1	\$	\$
55	RECONNECT EXISTING SANITARY SEWER SERVICE	EA	34	\$	\$
56	INSTALL 4" SANITARY SEWER SERVICE	LF	550	\$	\$
57	INSTALL 6" SANITARY SEWER SERVICE	LF	10	\$	\$
58	INSTALL 4" SANITARY SEWER SERVICE CLEANOUT	EA	2	\$	\$
59	INSTALL 6" SANITARY SEWER SERVICE CLEANOUT	EA	2	\$	\$
60	ABANDON EXISTING SANITARY SEWER SERVICE IN PLACE	EA	2		
61	REMOVE AND REPLACE TOP SOIL	SY	470	\$	\$
62	SEEDING	SF	6000	\$	\$

Schedule B Total Bid \$ _____

Total in words \$ _____

Unit Price work has been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contact Documents.

Bidder may bid on either Schedule A or Schedule B or both. Contract, if awarded, will be awarded for Schedule A or Schedule B in the best interest of the Owner.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete within **40** calendar days after the date when the Contract Time commences to run, as provided in paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions within **50** calendar days after the date when the Contract Time commences to run. All work shall be completed by June 2012. Once Notice to Proceed is issued, the Contractor shall work diligently to completion.
- 6.02 The Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are attached to and made a condition of this bid:
- A. Required Bid Security in the form of a Bid Bond.
 - B. Copy of Certificate of Residency, if bidding as a resident.

ARTICLE 8 – BID SUBMITTAL

8.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's Signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest: _____
(Signature of Corporate Secretary)

Bidder's Business address: _____

Phone: _____ Facsimile: _____

Submitted on _____, 20__.

Contractor License No. _____.

BID BOND

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable

BIDDER (Name and Address):

SURETY (Name and Address of Principal of Business):

OWNER (Name and Address):

Town of Moorcroft
104 South Big Horn Avenue
Moorcroft, Wyoming 82721

BID

Bid Due Date:

Project: Town of Moorcroft – SEWER LINE WEST OF BELLE FOURCHE AVENUE
FROM NORTH OF CONVERSE STREET TO RAILROAD STREET

The project consists of replacing approximately 1100 linear feet of sanitary sewer line with 8” sanitary sewer line, including four manholes, re-establishing sewer services and other related work.

BOND

Bond Number:

Date (Not Later than Bid due date):

Penal sum _____ (Words) _____ (Numerals)

Surety and Bidder, intending to be legally bound hereby, subject to the term printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

_____ (Seal)
Bidder's Name and Corporate Seal

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assign to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - a. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - b. All Bids are rejected by Owner, or
 - c. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notice required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

AGREEMENT BETWEEN THE OWNER AND CONTRACTOR

THIS AGREEMENT is by and between TOWN OF MOORCROFT (OWNER) and _____
_____ (CONTRACTOR).

Owner and Contractor, in consideration of the mutual covenants set forth herein agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project consists of replacing approximately 1100 linear feet of sanitary sewer line with 8” sanitary sewer line, including four manholes, re-establishing sewer services and other related work.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only part is generally described as follows:

**Town of Moorcroft –
SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM NORTH OF CONVERSE STREET TO
RAILROAD STREET**

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Stetson Engineering, Inc. (Engineer), who is to act as the Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIME

- 4.01 Time of the Essence
- A. All time for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Days to Achieve Substantial Completion and Final Payment.
- A. Bidder agrees that the Work will be substantially complete within **40** calendar days after the date when the Contract Time commences to run, as provided in paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with paragraph

14.07.B of the General Conditions within **50** calendar days after the date when the Contract Time commences to run.

4.03 Liquidated Damages.

- A. The Owner and Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed, in accordance with Article 12 of the General Conditions. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and Contractor agree that as liquidated damages for delay, (but not as a penalty), Contractor shall pay Owner **twelve hundred dollars (\$1,200.00)** for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the Owner, Contractor shall pay Owner **six hundred dollars (\$600.00)** for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 -- CONTRACT PRICE

- 5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds according to the Bid, which is attached as an Exhibit.

ARTICLE 6 -- PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment, in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

6.02 Progress Payments

- A. Owner shall make progress payments on account of the Contract Price, on the basis of the Contractor's Applications for Payment, as recommended by the Engineer, subsequent to the second Council meeting of each month during construction, as provided below. All such payments will be measured by the schedule of values established in Paragraph 2.04.A of the General Conditions, (and in the case of Unit Price Work based on the number of units completed), or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in

each case, less the aggregate of payments previously made and less such amounts as the Engineer determines or the Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. Ninety percent (90%) of the Work completed (with the balance being retainage). If Work has been fifty percent (50%) completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to the OWNER and the ENGINEER, the OWNER, on recommendation of the ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage;
 - b. Ninety percent (90%) of the materials and equipment not incorporated in the Work, (with the balance being retainage).
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer, as provided in said paragraph 14.07, on the forty-first (41st) day of the publishing of the Notice of Acceptance.

ARTICLE 7 -- INTEREST

- 7.01 All moneys not paid when due, as provided in Article 14 of the General Conditions, shall bear interest at a rate of 6% annually.

ARTICLE 8 -- CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedure of construction expressly required by the Bidding Documents, and safety precautions and programs incident hereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information know to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 -- CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consists of the following:
1. This Agreement (pages D1 to D7, inclusive).
 2. Performance bond (pages 1 to 3, inclusive).
 3. Payment Bond (pages 1 to 3, inclusive).
 4. Notice of Award (pages 1 to 2, inclusive).
 5. General Conditions (pages F1 to F57, inclusive).
 6. Supplementary Conditions (pages G1 to G30, inclusive).
 7. Specifications bearing the title 2000 Edition of the Wyoming Public Works, Standard Specifications.
 8. Drawings consisting of 11 sheets with each sheet bearing the following general title: Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street
 9. Project Manual bearing the title: Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street
 10. Addenda (pages 1 to __, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to __, inclusive).
 - b. Documentation submitted by Contractor prior to the Notice of Award (pages 1 to __, inclusive).
 12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 - i. Notice to Proceed (pages 1 to 1, inclusive).
 - ii. Work Change Directives.
 - iii. Change Order(s)
- B. The documents listed in Paragraphs 9.01.A are attached to this Agreement, (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented, as provided in Paragraphs 3.04 of the General Conditions.

ARTICLE 10 -- MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meaning indicated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent, (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

10.05 Other Provisions None

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to the Owner and the Contractor. All portions of the Contract Documents have been signed or identified by the Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

OWNER:
Town of Moorcroft

CONTRACTOR:

By: _____

By: _____

Title: Mayor

Title: _____

[Corporate Seal]

Attest _____

Attest _____

Title: City Clerk

Title: _____

Address for giving notices:

Address for giving notices:

Town of Moorcroft
104 North Big Horn Ave.
PO Box 70
Moorcroft, WY 82721

License No. _____

Agent for service of process: _____

(If contractor is a corporation or partnership, attach evidence of authority to sign.)

NOTICE OF AWARD

To: _____

Address: _____

Project Name: **TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE
FOURCHE AVENUE FROM NORTH OF CONVERSE STREET
TO RAILROAD STREET**

Project No: 11.005

You are notified that your Bid, dated _____, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for:

Total Work

The Contract Price of your Contract is \$ _____

Two copies of each of the proposed Contract Documents and drawings accompany this Notice of Award.

You must comply with the following conditions precedent within thirty (30) days of the date you receive this Notice of Award.

1. Deliver to the Owner, two fully executed counterparts of the Agreement.
2. Also Deliver the executed Contract Documents and Contract security (Bonds) as specified in the Instruction to Bidders (Article 20), and General Conditions (Paragraph 5.01).
3. Other condition precedent:
 - a. _____
 - b. _____
 - c. _____

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul the Notice of Award and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement and associated Contract Documents.

You are required to return an acknowledged copy of this Notice of Award to the Owner within five (5) days from the date of this Notice to you.

Dated this _____ day of _____, 20__

Town of Moorcroft
Owner

By: _____
Mayor

ACCEPTANCE OF NOTICE

RECEIPT OF THE ABOVE NOTICE OF AWARD IS HEREBY ACKNOWLEDGED.

By: _____, this _____ day of _____, 20__.
Contractor

By: _____
Contractor

Name: _____

Title: _____

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable

CONTRACTOR (Name and Address): _____ SURETY (Name and Address of Principle Place of Business): _____

OWNER (Name and Address): Town of Moorcroft
104 North Bighorn Ave.
PO Box 70
Moorcroft, Wyoming 82721

CONTRACT

Date:
Amount:
Description (Name and Location)

BOND

Bond Number:
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the following pages hereof, for each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)
Name and Title:

SURETY

Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

(Space is provided below for signatures of additional parties, if required)

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)
Name and Title:

SURETY

Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4 Waive its rights to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determined the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefore.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 6.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2 Additional legal, design professional, and delay cost resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of Contractor.
7. Surety shall not be liable to Owner or others for obligations of Contract that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice of Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 12.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Wyoming.

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable

CONTRACTOR (Name and Address): _____ SURETY (Name and Address of Principle Place of Business): _____

OWNER (Name and Address): Town of Moorcroft
104 Big Horn Ave.
PO Box 70
Moorcroft, Wyoming 82721

CONTRACT
Date:
Amount:
Description (Name and Location)

BOND
Bond Number:
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the following pages hereof, for each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
Company:

Signature: _____(Seal)
Name and Title:

SURETY
_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

(Space is provided below for signatures of additional parties, if required)

CONTRACTOR AS PRINCIPAL
Company:

Signature: _____(Seal)
Name and Title:

SURETY
_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for the use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor;
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials, or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice of Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Wyoming.

Instruction to Contractors Regarding Retainage

Pursuant to W.S. 16-6-701 through 16-6-706, the Contractor is required to set up an appropriate account at an acceptable depository to which retainage funds can be deposited by the Owner. This account must meet the following requirements, and the appropriate certification must be received by the Owner from the depository:

- 1) All fees for establishing and maintaining the account must be paid by the Contractor;
- 2) For tax purposes, all interest paid on these funds must be reported under the tax number for the Contractor;
- 3) The account must be such that no principal funds are released to the Contractor until the Depository has received written authorization from the Owner to release the principal funds;
- 4) Should the Contractor fail to satisfactorily complete the work, the Owner will have access to these principal funds; and
- 5) All responsibility for the safety of these principal funds lie with the Contractor and the Depository. The Owner bears no responsibility for default.

Attached are four forms to facilitate the process;

1. Certification
2. Interest Bearing Deposit Agreement
3. Assignment
4. Retainage Release

CERTIFICATION

I, _____, a duly authorized representative of _____ (Depository) of _____, do hereby certify that Account # _____ has been set up by _____ (Contractor).

I further certify this account meets all of the following criteria:

- 1) All costs of establishing this account and maintaining this account will be paid by the Contractor;
- 2) All interest and income paid on this account will be paid to the Contractor in accordance with W.S. 16-6-705;
- 3) For tax purposes, interest accrued on this account will be reported in the name and tax number of the Contractor;
- 4) No principal funds paid into this account shall be released to the Contractor until a fully executed Retainage Release form has been received from the Owner. A sample copy of this form and authorized signatures are on file with the Depository;
- 5) Upon notification by Owner that all or a portion of the principal funds in this account are due and owing to the Owner as a result of the acts or omissions of the Contractor, such amount shall be paid to Owner;
- 6) This account has been assigned by the Contractor to the Owner;
- 7) All responsibility and liability for the safety of these principal funds lie with the Contractor and this Depository;
- 8) This Depository shall provide an agent for this account, at no cost to the Owner, as provided in the Interest Bearing Deposit Agreement with the Owner; and
- 9) Attached to this Certification is written notice of this account by Contractor to the Contractor's surety.

Signed: _____

Title: _____

Revision 7-29-91

Notary

INTEREST BEARING DEPOSIT AGREEMENT

Pursuant to W.S. 16-6-704 it is agreed this date between the TOWN OF MOORCROFT (Owner) and _____ Depository of _____, the Depository designated by _____ (Contractor) as follows:

1. The Contractor has provided the required notice to surety, a copy of which is attached.
2. The Depository shall provide an agent for the custodial care and servicing of any deposits placed with the Depository in the account named in the attached Certification, which is made a part hereof.
3. The services provided by the Depository shall include the safekeeping of the obligations and the rendering of all services required to effectuate the purposes of the aforementioned account.
4. Any expenses incurred for these services shall not be charged to the Owner.
5. No funds shall be deposited in the account other than retainage on the construction contract between Owner and Contractor and Contractor shall not allow any commingling of retainage with other funds. The Depository shall collect all interest and income when due and shall pay them when and as collected to the Contractor or as otherwise instructed by the Contractor.

DEPOSITORY:

OWNER:

TOWN OF MOORCROFT

By: _____

By: _____

Date

Date

ASSIGNMENT

WHEREAS, _____, hereinafter referred to as ASSIGNOR, has been awarded a contract to construct the **TOWN OF MOORCROFT – SEWER LINE WEST OF BELLE FOURCHE AVENUE FROM NORTH OF CONVERSE STREET TO RAILROAD STREET** hereinafter referred to as ASSIGNEE, through funds provided by the Owner, and pursuant to the provisions of W.S. 16-6-702, ASSIGNOR is required to assign to ASSIGNEE a retainage account which is in the name of ASSIGNOR.

ASSIGNOR does hereby assign and transfer to ASSIGNEE its right, title and interest in and to Account # _____ established at _____. This assignment shall be conditioned upon the ASSIGNEE agreeing to release the principal funds in this account and return them to ASSIGNOR upon the satisfactory completion of the aforementioned construction contract and upon the final acceptance by ASSIGNEE of the contract work. ASSIGNEE may authorize a release of a part of the principal funds held within the account assigned to ASSIGNEE in the manner provided by W.S. 16-6-702. The release of any principal funds from the account shall be made only upon the signature of the authorized representative of the ASSIGNEE, by written request from ASSIGNOR, and with written approval from any surety furnishing bonds for the contract work. The conditions of the attached Certification and the attached Interest Bearing Deposit Agreement are binding hereto and a part hereof.

DATED this ____ day of _____, 20__.

ASSIGNOR:

ASSIGNEE:

By: _____

By: _____

ATTEST

ATTEST

By: _____

By: _____

RETAINAGE RELEASE

We the undersigned representatives of the Owner do hereby authorize _____ (Depository) to release _____ (dollars) \$ _____ in funds from Account # _____, held in the name of _____ (Contractor) on or after _____, 20____. The written approval from any surety furnishing bonds for the contract work is attached hereto.

OWNER:

_____ TOWN OF MOORCROFT _____

By: _____

_____ DATE

Authorized signatures are listed below:

ASSIGNOR:

ASSIGNEE:

Revision 2/12/90

NOTICE TO PROCEED

Dated: _____, 20__

To: _____
Contractor

Address: _____

Project Name: **Town of Moorcroft-Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street**

Project No: 11.005

You are notified that the Contract Times under the above contract will commence to run on _____. On that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the number of days to achieve Substantial Completion is **40**, and the number of days to achieve readiness for final payment is **50**.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you must deliver to the Owner (with copies to Engineer and other identified additional insured's) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must [*add other requirement*]:

Town of Moorcroft
Owner

By: _____
Mayor

Date

ACCEPTANCE OF NOTICE

RECEIPT OF THE ABOVE NOTICE OF AWARD IS HEREBY ACKNOWLEDGED.

By: _____, this _____ day of _____, 20__.
Contractor

By: _____
Contractor

Name: _____

Title: _____

Contractor's Application For Payment No. _____

	Application Period:	Application Date:
To (Owner): Town of Moorcroft	From (Contractor):	Via (Engineer) Stetson Engineering, Inc.
Project: Town of Moorcroft – Sewer Line West of Belle Fourche Ave. From North of Converse St. to Railroad St.	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.: 11.005

APPLICATION FOR PAYMENT Change Order Summary

Approved Change Orders			
Number	Additions	Deductions	
			1. ORIGINAL CONTRACT PRICE..... \$ _____
			2. Net change by Change Orders..... \$ _____
			3. CURRENT CONTRACT PRICE (Line 1 ± 2)..... \$ _____
			4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate) \$ _____
			5. RETAINAGE:
			a. _____ % x \$ _____ Work Completed..... \$ _____
			b. _____ % x \$ _____ Stored Material \$ _____
			c. Total Retainage (Line 5a + Line 5b) \$ _____
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$ _____
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application) \$ _____
			8. AMOUNT DUE THIS APPLICATION..... \$ _____
			9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above) \$ _____
TOTALS			
NET CHANGE BY CHANGE ORDERS			

CONTRACTOR'S CERTIFICATION

The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:	Date:
-----	-------

Payment of: \$ _____
(Line 8 or attach explanation of other amount)

is recommended by: _____ (Date) _____ (Engineer)

Payment of: \$ _____
(Line 8 or attach explanation of other amount)

is approved by: _____ (Date) _____ (Owner)

Progress Estimate

Contractor's Application

Project: Town of Moorcroft – Sewer Line West of Belle Fourche Ave. From North of Converse St. to Railroad St.						Application Number:				
Application Period:						Application Date:				
A			B	C	D	E	F		G	
Item		Bid Quantity	Unit Price	Bid Value	Estimated Quantity Installed	Value	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (E) / B	Balance to Finish (B - F)
Bid Item No.	Description									
Totals										

Work Change Directive

No. _____

Date of Issuance: _____ Effective Date: _____

Project: Town of Moorcroft – Sewer Line West of Belle Fourche Ave. From North of Converse St. to Railroad St.	Owner: Town of Moorcroft	Project No.: 11.005
Contractor:		Date of Contract:

You are directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

- Non-agreement on pricing of proposed change.
- Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/decrease)

Contract Time _____ days (increase/decrease)

If the change involves an increase, the estimated amounts are not to be exceeded without further authorization.

Recommended for Approval by Engineer:	Date
Accepted for Contractor by:	Date
Authorized for Owner by:	Date

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project: Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street

Owner: Town of Moorcroft

Project No.: 11.005

Date of Contract: _____

Contractor: _____

Engineer: Stetson Engineering, Inc.

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- All Work under the Contract Documents:
- The following specified portions:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- Amended Responsibilities
- Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

_____ Executed by Engineer	_____ Date
_____ Executed by Contractor	_____ Date
_____ Executed by Owner	_____ Date

CERTIFICATE OF FINAL COMPLETION

Project: Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street

Project No.: 11.005

Date of Contract: _____

Owner: Town of Moorcroft

Contactoer: _____

Engineer: Stetson Engineering, Inc.

This Certificate of Final Completion applies to:

- All Work under the Contract Documents:
- The following specified portions:

Date of Final Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be complete in accordance with the Contract Documents.

The project will be advertised according to W.S. 16-6-166, and the Affidavit on Behalf of the Contractor is attached to and made part of this Certificate

Executed by Contractor

Date

Executed by Engineer

Date

Executed by Owner

Date

AFFIDAVIT ON BEHALF OF CONTRACTOR

STATE OF: Wyoming

TOWN: Moorcroft

COUNTY: Crook

DATE: _____

I certify to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the correspondence contract documents between the Town of Moorcroft the Owner, and _____ the Contractor, dated _____.

For the Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street Project

And further declare that all bills, for materials, supplies, utilities and for all other things furnished or caused to be furnished by the above named contractor and used in the execution of the above contract have been fully paid, and that there are no unpaid claims or demands of State Agencies, sub-contractors, material men, mechanics, laborers or any other resulting from or arising out of any work done or ordered to be done by said contractor under the above identified contact.

In consideration of the prior and final payments made and all payments made for authorized changes, the contractor releases and forever discharges the Owner from any and all obligations and liabilities arising by virtue of said contract and authorized changes between the parties hereto, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the Owner, arising out of or in any way relating to said contract and authorized changes.

This statement is made for the purpose of inducing the Owner to make FINAL PAYMENT under the terms of the contract, relying on the truth and statements contained therein.

Contractor

Date

Address

City

State

Zip Code

Signed by

Title

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

WARRANTY (Contractor)

_____ hereinafter the CONTRACTOR, does expressly affirm, promise and guarantee all project improvements including materials, equipment and workmanship on the Town of Moorcroft – Sewer Line West of Belle Fourche Avenue from North of Converse Street to Railroad Street FOR A PERIOD OF **ONE YEAR** FROM THE DATE THE PROJECT IMPROVEMENTS ARE ACCEPTED BY FORMAL ACTION OF THE MOORCROFT TOWN COUNCIL. In the event that a particular item of equipment or major element of the total project improvements was placed into continuous service prior to Substantial Completion of the total project, an Attachment A may be attached to this Warranty to designate the separate warranty periods. Attachment A shall only be used when the requirements of General Condition 13.07 have been met.

CONTRACTOR further agrees in the event that any or all of the Project improvements fail to conform to the Contract Documents or require any rebuilding, construction or reconstruction to keep Project improvements in conformity with the Contract Documents or to bring Project improvements up to the Contract Document Specifications that CONTRACTOR will pay all necessary, reasonable and normal costs whatsoever, incurred by the Town of Moorcroft in repairing, construction, reconstruction, or rebuilding any of the Project improvements which at any time within the above mentioned period of **ONE YEAR** is not in conformity with the Contract Documents.

Provided, however: That the Town of Moorcroft shall give written notice to CONTRACTOR that the Town of Moorcroft intends to perform work on the Project improvements and that said notice shall specify the improvement, its location and the cause or kind of non-conformity with reference to the relevant Contract Documents. Said notice shall be sent to CONTRACTOR by registered mail before the Town begins any work or incurs any cost unless an emergency situation occurs. The occurrence of an emergency shall be determined in the reasonable discretion of the Town Engineer of the Town of Moorcroft, and is declared to be an event which renders advance notice contrary to the health, safety or welfare of the residents of the Town of Moorcroft. In case the Town Engineer finds the existence of an emergency requiring immediate action he shall serve notice to CONTRACTOR in the form above mentioned as soon as practical and shall include an explanation of the state of affairs requiring emergency action.

Provided, further: That the obligation of CONTRACTOR shall be to compensate the Town of Moorcroft for bringing any improvements up to the Contract Documents Specifications and this obligation shall cover all work necessary to bring the improvement into conformity, even if the work occurs after the expiration of the one year period specified above if the Town sent notice as provided above within the one year period or, in the case of any emergency as provided above if the Town actually began work on the improvement within the one year period.

CONTRACTOR and the Town of Moorcroft agree and acknowledge that this Agreement is the consideration for acceptance by the Town of Moorcroft of the Project improvements for maintenance by the Town of Moorcroft including, but not limited to the release of any performance or penal bonds, letters of credit, cash escrows, promissory notes or other securities posted and approved to secure the installation of required Project improvements for

DATED this _____ day of _____, 20__

CONTRACTOR (COMPANY NAME)

SIGNATURE (TITLE)

STATE OF WYOMING }
} SS
COUNTY OF CROOK }

The foregoing instrument was acknowledged before me by _____,
this _____ day of _____, 20__

Witness my hand and official seal

Notary Public

My commission Expires:

APPROVED BY TOWN OF MOORCROFT

MAYOR, TOWN OF MOORCROFT

ATTEST:

MOORCROFT TOWN CLERK

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

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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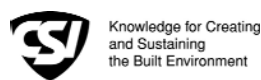
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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 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 Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed 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. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

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*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions 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 Milestones, if any, (ii) achieve Substantial Completion; and (iii) 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. *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.

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

22. *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.

23. *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.

24. *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.

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

26. *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.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *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.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *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.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *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.

35. *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.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

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. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *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.

42. *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.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *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.

45. *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.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

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

48. *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.

49. *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.

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

51. *Work*--The entire 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.

52. *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.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, 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 exercise of professional judgment, action or determination will be solely to evaluate, in general, the 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 is not intended to and 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 9.09 or any other provision of the Contract Documents.

C. Day

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

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. 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).

E. *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.

F. 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 and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *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.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. 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. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for 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 Submittals; 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.

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, 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.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 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.A. Contractor shall have an additional 10 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 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 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 required by one is as binding as if required 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. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, 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. *Contractor's Review of Contract Documents Before Starting Work:* 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.

2. *Contractor's Review of Contract Documents During Performance of Work:* 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 promptly report it to Engineer in writing. 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.

3. 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. 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 by either a Change Order or 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:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. 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 all of the Work under a direct or indirect contract with Contractor, shall not:

1. 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 consultants, including electronic media editions; or

2. 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.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained

or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL 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 or a part thereof, 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 or Engineer, or any of their Related Entities 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 9.07 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 with respect to 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 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 and Engineer, and any of their Related Entities 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 or 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 or Engineer, or any of their Related Entities 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.A); 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, and Engineer, and the officers, directors, partners, employees, agents, 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. G 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 and Engineer, and the officers, directors, partners, employees, agents, 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.H 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 do not 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 of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, 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 the 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 promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide 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.

B. 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:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. 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 required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, 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, 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 6.11 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 30 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.

a. 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, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, 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 insured or 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, (other than caused by flood) 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, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, 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 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. 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, and Engineer, 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, 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, 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, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, 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, and Engineer, and the officers, directors, partners, employees, agents, 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 perils 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, or Engineer, and the officers, directors, partners, employees, agents, 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 .

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 2.01.B. 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. 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.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications 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 and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

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. Contractor will not permit the performance of Work on a 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 Contract Documents, 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 special warranties and guarantees required 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.

C. 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. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

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:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially 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 requirements 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 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:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) 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 other work on the Project) to adapt the design to the proposed substitute item; and

c) 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;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall 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,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is 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 requirements for review by Engineer will be similar to those provided in Paragraph 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 may require Contractor to furnish additional data about the proposed substitute item. 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 Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each 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. 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:

1. 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

2. shall anything in the Contract Documents 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, and Engineer, 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, 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.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, 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 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. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall 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 shall 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 and Engineer, and the officers, directors, partners, employees, agents, 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 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 the Work 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, 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.

C. 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 Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , 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).

D. 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 and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. 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.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , 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.

C. Submittal Procedures

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

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

b. the suitability of 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 Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. 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 certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of 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 shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. 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 that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. 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.

C. 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 review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

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

7. 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 and Engineer, and the officers, directors, partners, employees, agents, 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 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 but only to the extent caused 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 .

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 officers, directors, partners, employees, agents, consultants and subcontractors 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.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via 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, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, 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. 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.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

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 When Due*

A. Owner shall make payments to Contractor 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 of 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 9.09. 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 authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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 *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 or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties 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.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to 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.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

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

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

9.07 *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.

9.08 *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. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, 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.

9.09 *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 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract 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 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 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*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, 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. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, 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). 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).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; 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, except those excluded in Paragraph 11.01.B, 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, expresses, and similar petty cash items in connection with the Work.

i. 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, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or 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 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 and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash 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

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash 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.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. 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.

B. 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 9.07.

C. 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.

D. 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. 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. 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 may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times 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 covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times 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.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them 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.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for 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.

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, their consultants and 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.C; 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 Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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.

C. If it is found that the uncovered 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.

D. If, the uncovered 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 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. Promptly after receipt of notice, 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).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

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 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:

1. repair such defective land or areas; or
2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. 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.

B. If Contractor does not promptly comply with the terms of Owner's written 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. 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.

C. 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 .

D. 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.

E. 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 or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or 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 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 in the Agreement 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 progress 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 9.07, 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:

a. 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

b. 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:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. 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 stated 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 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 will 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.

B. Promptly after Contractor's notification, , 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.

C. If Engineer considers the Work substantially complete, Engineer will 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.

D. 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.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy 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, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when 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.

2. 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.

3. 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.

4. No use or 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:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. 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. Engineer's 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, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , 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 (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, 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 accordance with the requirements herein and expressly acknowledged by Owner in writing as 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 granted 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 surety) seven days written notice of its intent to terminate the services of Contractor:

1. 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),

2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. 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.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

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, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. 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. 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. 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. 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, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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.

B. 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. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
2. agrees with the other party to submit the Claim to another dispute resolution process, or
3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

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:

1. 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

2. 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. 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 Contract or termination of the services of Contractor.

17.05 *Controlling Law*

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

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700, 2002 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.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (C-700, 2002 ed.) have the meanings assigned to them in the General Conditions.

SC-1.01 Defined Terms

Add the following language at the end of the definition entitled "Agreement" of the General Conditions:

"The definition of the word "Contract" is synonymous with the word "Agreement" and is used interchangeably in the Contract Documents."

And as so amended this definition remains in effect.

Add the following language to the end of the first sentence of the definition entitled "Drawings" of the General Conditions.

The definition of the word "Plans" is synonymous with the word "drawings" and is used interchangeably in the Contract Documents.

Delete Article 1.01 A.18. of the General Conditions in its entirety and insert the following in its place:

Add the following new paragraphs immediately after the last paragraph of Article 1.01 of the General Conditions, which are to read as follows:

Adverse Weather Day – A calendar day on which weather does not permit construction operations to proceed for a minimum of five (5) hours with the normal working force engaged in performing the controlling items of work which would be in progress at that time based on the most recent approved Contractor schedule.

Controlling Item – Any item of work, which would normally be in progress and would control the completion of the project.

Calendar Day – A day of twenty-four (24) hours shown on the calendar measured from midnight to the next midnight.

Working Day – A calendar day, other than Holidays or Sundays, except as permitted in writing by the Engineer, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for at least five (5) hours, with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

SC-2.02 Copies of Documents

Delete Paragraph 2.02 A in its entirety and insert the following in its place:

1. Owner shall furnish to Contractor up to five copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Delete Article 2.03 of the General Conditions in its entirety and insert the following in its place:

- A. The “Contract Time”, or number of days allowed for the performance and completion of the work included in the contract, will be stated in the bid documents and agreement.

- (i.) Calendar Day Contracts: When the contract time is on a calendar day basis, the contract time will be on the date determined in the Notice to Proceed and continue at the rate of one contract day charged for each day of the week, until the work is complete. No calendar day shall be charged when conditions beyond the control of the Contractor preclude prosecution of the work.

Calendar days will be charged if the Contractor permits construction operations to proceed for five (5) or more hours of the day during the normal working week, and Saturday, Holidays, Sundays, and if, in the opinion of the Engineer, conditions allow progress of work on items essential to the completion of the project for a period of five (5) or more hours of the day.

A full working day will be charged on calendar days when the Contractor could be working on a controlling item, but elects not to work, or elects to work elsewhere. Allowance will not be made for delay or suspension of the work due to the fault of the Contractor. The Engineer will determine which days are working days.

No calendar days will be charged in the event delays are encountered as outlined in Article 12.03 of the General Conditions.

The number of days for performance allowed in the contract as awarded is based on the original quantities as outlined in the Bidder’s Proposal. If satisfactory fulfillment of the contract requires performance of extra work or work on items with an increase in quantities that will take additional time to complete, the number of days allowed for performance shall increase in the same proportion as the cost of increased work bears to the total original contract amount. Should the Contractor feel that the extension based on a monetary basis is insufficient for the increased work involved, he may submit written information, which will justify additional time. Such information must show how the increased work delays the overall completion of the entire project. Information shall be submitted as soon as possible after the increased work has been performed. If, in the opinion of the Engineer the information submitted justifies additional time, a Construction Change Order increasing the contract time will be prepared.

If the Contractor finds it impossible, for reasons beyond his control, fault, or negligence, to complete the work within the contract time as specified or as extended in accordance with the provisions of this subsection, he may, at any time, request to the Engineer for an extension of time, setting forth therein the reasons which he believes will justify the granting of his request. Such request shall be submitted within ten (10) days of the start of each occurrence for which an extension is desired. Failure to comply with notice requirements shall constitute a waiver, and failure to file a claim for additional compensation due to the delay at the time the Contractor requests the time extension bars him from claiming additional compensation for the delay.

The Contractor shall immediately notify the Engineer in writing when it becomes evident that there will be a delay in obtaining critical materials. Delays due to slow delivery of materials from the supplier or fabricator, material delayed for reasons of late ordering, financial considerations, or other causes which could have been prevented will be considered within the Contractor’s control. However, delays in delivery of materials to the Contractor due to some unusual market condition caused by an industry wide strike,

national disaster, area-wide shortage, or other reason beyond the control of the Contractor, Subcontractor, or Supplier, will be considered a basis for granting additional time.

The Contractor's plea that insufficient time was specified is not a valid reason for the extension of time.

If the Engineer finds that the work was delayed because of conditions beyond the Control and without fault of the Contractor, they may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

When the final acceptance has been duly made as prescribed in Article 14.07, the daily time charge will cease.

- (ii) Fixed Completion Date Contracts: When the contract time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. If work is not completed by the date specified, the Engineer will keep a record of working days charged after that date and furnish the Contractor a bi-weekly statement showing the number of days charged to the contract for the preceding two (2) weeks. The Contractor will be allowed one (1) week in which to file a written protest setting forth in what respect said biweekly statement is incorrect; otherwise, the statement shall be deemed to have been accepted by the Contractor as correct. If the Engineer and Contractor fail to reach an agreement on any statement of working days, the Engineer shall refer the statement in question to the City Engineer for review and final decision.

Allowance will not be made for delay or suspension of the work due to the fault of the Contractor. The Engineer will determine which days are working days.

When the Contractor is or could be working on the controlling item, but, in the judgment of the Engineer, weather or job conditions beyond the Contractor's control are such that the Contractor could or does work only approximately one-half day or the Contractor's efficiency is materially reduced, the Engineer may count one-half working day.

No working days will be charged in the event delays are encountered as outlined in Article 12.03 of the General Conditions.

The number of days for performance allowed in the contract as awarded is based on the original quantities as outlined in the Bidder's Proposal. If satisfactory fulfillment of the contract requires performance of extra work or work on items with an increase in quantities that will take additional time to complete, the number of days allowed for performance shall increase in the same proportion as the cost of increased work bears to the total original contract amount. Should the Contractor feel that the extension based on a monetary basis is insufficient for the increased work involved, he may submit written information, which will justify additional time. Such information must show how the increased work delays the overall completion of the entire project. Information shall be submitted as soon as possible after the increased work has been performed. If, in the opinion of the Engineer the information submitted justifies additional time, a Construction Change Order increasing the contract time will be prepared.

If the Contractor finds it impossible, for reasons beyond his control, fault, or negligence, to complete the work within the contract time as specified or as extended in accordance with the provisions of this subsection, he may, at any time, request to the Engineer for an extension of time, setting forth therein the reasons which he believes will justify the granting of his request. Such request shall be submitted within ten (10) days of the start of each occurrence for which an extension is desired. Failure to comply with notice requirements shall constitute a waiver, and failure to file a claim for additional

compensation due to the delay at the time the Contractor requests the time extension bars him from claiming additional compensation for the delay.

The Contractor shall immediately notify the Engineer in writing when it becomes evident that there will be a delay in obtaining critical materials. Delays due to slow delivery of materials from the supplier or fabricator, material delayed for reasons of late ordering, financial considerations, or other causes which could have been prevented will be considered within the Contractor's control. However, delays in delivery of materials to the Contractor due to some unusual market condition caused by an industry wide strike, national disaster, area-wide shortage, or other reason beyond the control of the Contractor, Subcontractor, or Supplier, will be considered a basis for granting additional time.

The Contractor's plea that insufficient time was specified is not a valid reason for the extension of time.

If the Engineer finds that the work was delayed because of conditions beyond the Control and without fault of the Contractor, they may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

When the final acceptance has been duly made as prescribed in Article 14.07, the daily time charge will cease.

- B. The Contract Times will commence to on the day indicated in the Notice to Proceed.

SC-2.05 Before Starting Construction

Add a new paragraph immediately after paragraph 2.05.A.3 of the General Conditions, which is to read as follows:

- 2.05.4 Contractor shall submit a preliminary list of construction equipment with hourly rates, owned or rented by the Contractor and all Subcontractors that will be used in the performance of the Work. The equipment list will include information necessary to confirm the hourly rates per Paragraph 11.01.A.5.c of the General Conditions and these Supplementary Conditions including: make, model, and year of manufacture as well as the horsepower, capacity or weight, and accessories.

SC-2.06 Preconstruction Conference

Add two new paragraphs immediately after Paragraph 2.06.A of the General Conditions, which are to read as follows:

- B. A list of supervisory and responsible-in-charge personnel working on the project shall be provided by the Contractor for the Preconstruction Conference.
- C. The Contractor shall also submit at least one name that will be the Contractor's representative to respond to emergency conditions. Contractor shall provide the Engineer with the representative's telephone number prior to commencement of construction."

SC-2.07 Initial Acceptance of Schedules

Delete Paragraph 2.07 of the General Conditions in its entirety and insert the following in its place:

"Prior to the first application for payment all submittals identified in paragraph 2.05 shall be finalized and acceptable to the Engineer and Owner. No progress payment shall be made to Contractor until the schedules are submitted to and acceptable to Engineer and Owner as provided

below. The progress schedule shall be in a Bar Chart or CPM format and show estimated time for each work item, starting and completion dates for each part of the Work, all dependencies and float time. The progress schedule shall be updated and resubmitted to Owner when the project schedule deviates from the previously approved schedule, for controlling items, by more than five days. Failure to properly submit required construction schedules will result in a delay in payment of monies due the Contractor until the required schedules are submitted.

The progress schedule will show an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Acceptance by either Engineer or Owner will neither impose on Engineer or Owner responsibility for the sequencing, scheduling or progress of the Work and will not interfere with or relieve Contractor from Contractor's full responsibility therefore. Contractor's schedule of shop drawings and sample submissions will be acceptable to Engineer as providing a workable arrangement for reviewing and processing the required submittals. Contractor's schedule of values and Contractor's list of construction equipment (as identified in SC 2.05.A.4) will be acceptable to Engineer as to form and substance."

SC-2.08 Mobile Equipment

Add a new Paragraph immediately after paragraph 2.07 of the General Conditions, which is to read as follows:

"2.08 Mobile Equipment

- "A. Prior to using any mobile machinery on any construction project receiving State of Wyoming funds, the Contractor shall provide certification to the Owner that the mobile machinery has been registered as required by Wyoming State Statutes W.S. 31-18-203 through 31-18-208. Mobile machinery shall be defined as heavy equipment, except shop or hand tools or attachments, which are self-propelled, towed or hauled and used primarily in construction and maintenance of roads, bridges, ditches, buildings or land reclamation. The certification requirement does not apply to any mobile machinery that is exempt under Wyoming State Statutes."

SC-4.01 Availability of Lands

Delete paragraph 4.01 of the General Conditions in its entirety and insert the following in its place:

- A. The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the Drawings, and shall use due care in placing construction tools, equipment, excavated materials, and pipeline materials and supplies, so as to cause the least possible damage to property and interference with traffic.
- B. If it is necessary or desirable that the Contractor use land outside of the Owner's easement or Right of Way, the Contractor shall obtain consent from the landowner and/or tenant of the land. The Contractor shall not enter for materials delivery or occupy for any other purpose with men, tools, equipment, construction materials, or with materials excavated from the site, any private property outside the designated construction easement boundaries without written permission from the landowner and tenant."

SC-4.02 Add the following new paragraph(s) immediately after Paragraph 4.02.B:

- C. In the preparation of Drawings and Specifications, Engineer relied upon the following reports of explorations and tests of subsurface conditions at the Site:

SC-4.02 Delete Paragraph 4.02.A and 4.02.B in their entirety and insert the following:

- A. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer.

SC-4.03 Differing Subsurface or Physical Conditions

Add the following to the end of paragraph 4.03.C.3:

“Failure of the Contractor to notify Owner and Engineer in writing about differing subsurface or physical conditions within fifteen (15) days of discovery or before disturbing such conditions or performing any of the Work in connection therewith will constitute an acceptance by the Contractor of the conditions encountered and shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.”

SC-4.04 Underground Facilities

Delete Paragraph 4.04 of the General Conditions in its entirety and insert the following Section 4.04 in its place:

- A. It is the Owner’s intent that the Owner, Engineer and Contractor meet the requirements of Wyoming State Statutes 37-12-301, 37-12-302, 37-12-304, and 37-12-305 and the requirements of the Town of Moorcroft Municipal codes regarding Underground Facilities. The Owner and Engineer have completed an evaluation of the project and project area with all known Underground Facility owners at the time this Contract with Contractor is executed.

- B. 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, are based on information and data furnished to the Owner or Engineer by the owner of such Underground Facilities or by others. The sources of information and type of information relied upon are listed in the Supplementary Conditions, SC-4.02 or on the Plans. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. The Owner and Engineer are responsible for the accuracy and completeness of any such information or data to the extent that the records or sources used to obtain the information are accurate and complete; and,
2. The Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.13, and repairing any damage thereto resulting from the Work, the cost of which will be considered having been included in the contract price.

- C. Not Shown or Indicated or Inaccurately Indicated.

If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated on the contract Documents the Contractor shall, promptly, after becoming aware thereof, and before performing any Work affected thereby, (except in an emergency as permitted by Paragraph 6.16) identify the owner of such Underground Facility and give written notice thereof to that owner and the Owner and Engineer. The Engineer will promptly review the Underground Facility to determine the extent to which the Contract Documents will be amended or supplemented. During such time, the

Contractor shall be responsible for the safety and protection of such Underground Facilities as provided in Paragraph 6.13.

D. Identified for Field Location by the Contractor.

If an Underground Facility is identified on the Contract Documents for field locating by the Contractor, the Contractor shall complete the field locating as instructed in the Contract documents. The Engineer will promptly review the Underground Facility to determine the extent to which the Contract Documents will be amended or supplemented. During such time, the Contractor shall be responsible for the safety and protection of such underground facilities as provided in Paragraph 6.13.”

SC-5.04 Contractor’s Liability Insurance

Delete Paragraph 5.04.B.7 in its entirety and insert the following:

7. with respect to completed operations insurance, and any insurance coverage written on a claims made basis, remain in effect for at least one year after final acceptance of the project.

Add the following new paragraph immediately after Paragraph 5.04.B.7.a:

C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amount or greater where required by law or regulations:

1. Workers’ Compensation, and related coverage’s under Paragraph 5.04.A.1 and 5.04.A.2 of the General conditions:
 - a. State Statutory
 - b. Applicable Federal (e.g. Longshoreman) Statutory
2. Contractor’s General Liability under Paragraph 5.04.A.3 through 5.04.A.6 of the General Conditions which shall include completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - a. General Aggregate \$2,000,000
 - b. Products – Completed Operations Aggregate \$2,000,000
 - c. Personal and Advertising Injury \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 - e. Property Damage Liability Insurance will provide explosion, collapse, and under-ground coverage where applicable
 - f. Excess or Umbrella Liability \$1,000,000
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions.
 - a. Bodily Injury:

Each Person	\$1,000,000
Each Accident	\$1,000,000

- b. Property Damage:
Each Accident \$1,000,000
 - c. Combined Single Limit of \$1,000,000
- 4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
 - a. Bodily Injury:
Each Accident \$1,000,000
Annual Aggregate \$2,000,000
 - b. Property Damage
Each Accident \$1,000,000
Annual Aggregate \$2,000,000

SC-5.06 Property Insurance

Delete Paragraph 5.06 of the General Conditions in its entirety.

SC-5.07 Waiver of Rights

Delete Paragraph 5.07.A of the General Condition in its entirety.

SC-5.08 Receipt and Application of Insurance Proceeds

Delete Paragraph 5.08.A of the General Conditions in its entirety and insert the following in its place:

- “A. Any insured loss under the policies of insurance required in this agreement will, to the extent necessary, be adjusted with Owner and made payable to Owner as fiduciary for the insured’s, 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”.

SC-5.09 Acceptance of Bonds and Insurance: Option to Replace

Add a new Paragraph 5.09.B

- “B. Failure of the Owner, to object to the coverage of Contractor’s insurance within the time provided, shall not relieve Contractor from his obligation to provide insurance that complies with the Contract Documents.”

SC-6.06 Concerning Subcontractors, Supplies, and Others

Delete paragraph 6.06.B of the General Conditions in its entirety and insert the following in its place:

- “B. If the Owner and Engineer require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days after Bid opening, submit to Owner a list

of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.”

Add the following new Paragraph 6.06.H immediately after Paragraph 6.06.G of the General Conditions, which is to read as follows:

- “H. Any subcontractor or material man entitled to protection of a bond or other form of guarantee approved by the Owner under Wyoming State Statute W.S. 16-6-112 shall give notice of his right to that protection to the prime Contractor as required under W.S. 16-6-121. Failure to give notice to a prime Contractor who has complied with subsections 6.06.H.5 and 6.06.H.6 of this article waives the subcontractor or material man’s protection under the bond or guarantee and waives any right to a lien for material or services provided.
1. The notice shall be given no later than sixty (60) days after the date on which services or materials are first furnished.
 2. The notice shall be sent to the prime Contractor by certified mail or delivered to and receipted by the prime Contractor or its agent. Notice by certified mail is effective on the date the notice is mailed.
 3. The notice shall be in writing and shall state that it is a notice of a right to protection under the bond or guarantee. The notice shall be signed by the subcontractor or material man and shall include the following information.
 - a. The subcontractor or material man’s name, address and phone number and the name of a contact person;
 - b. The name and address of the subcontractor’s or material man’s vendor; and
 - c. The type or description of the materials or services provided.
 4. This section shall only apply where the prime Contractor’s contract is for fifty thousand dollars (\$50,000) or more.
 5. The prime Contractor shall post on the construction site a prominent sign citing Wyoming State Statute W.S. 16-6-121 and stating that any subcontractor or material man shall give notice to the prime Contractor of a right to protection under the bond or guarantee and that failure to provide this notice shall waive the subcontractor or material man’s protection under the bond or guarantee and shall waive any right to a lien for materials or services provided.
 5. The Owner or his agent shall provide written notice of the information required by this section in the project specifications.”

SC-6.17 Shop Drawings and Samples

Add the following new paragraphs immediately after paragraph 6.17 of the General Conditions, which are to read as follows:

Transmittal and Review of Shop Drawings

- A. Engineer's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction 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.
- B. Submission: Contractor shall prepare and submit, as a part of the work progress schedule, a schedule for submission of all shop drawings specified or necessary for Engineer's approval of the use of equipment and materials proposed for incorporation in the work or needed for proper installation, operation, or maintenance. Submission of all shop drawings shall be scheduled to permit review, fabrication, and delivery in time to cause no delay in the work of Contractor or his subcontractors or any other Contractors as described herein.
 - 1. Contractor, in establishing his schedule for shop drawings shall allow ten (10) working days in Engineer's office for reviewing original submittals and seven (7) working days in Engineer's office for reviewing resubmittals.
 - 2. The schedule shall indicate the anticipated dates of original submission for each item and Engineer's acceptance thereof, and shall be based upon at least one resubmission of each item.
 - 3. All shop drawings of equipment and materials furnished by subcontractors, manufacturers, and suppliers shall be submitted to Engineer by Contractor.
 - 4. All shop drawings required prior to fabrication or manufacturer shall be scheduled for submission within the time specified for each. Shop drawings pertaining to storage, installation, and operation at the site shall be scheduled for Engineer's acceptance prior to delivery of the equipment or materials.
 - 5. Shop drawings shall be resubmitted the number of times required for Engineer's "no exceptions taken". However, any need for resubmittals in excess of the number set forth in the accepted schedule, or any other delay in obtaining acceptance of submittals, will not be grounds for either extension of the contract time or additional requests for compensation provided Engineer completes his reviews within the times stated above.
- C. Checking, Verification, and Submittal: After checking and verifying all field measurements, Contractor shall transmit all shop drawings to Engineer for acceptance. Contractor shall:
 - 1. Identify each submittal by contract title, number, and the specification division and section number marked thereon or in the letter of transmittal;
 - 2. Check and approve submittals of subcontractors, suppliers, and manufacturers prior to transmitting them to Engineer. Contractor's approval shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog

numbers, and similar data or he assumes full responsibility for doing so, and that he has coordinated each shop drawing with the requirements of the work and the Contract Documents. The Contractor shall submit with each submittal the Cover Page as attached herewith. **NO SUBMITTALS WILL BE ACCEPTED BY THE ENGINEER WITHOUT THE CONTRACTOR'S SIGNATURE ON THE COVER PAGE.**

3. At the time of each submission, call to the attention of Engineer in the letter of transmittal any deviations from the requirements of the Contract Documents.

D. Shop drawings to include the following:

1. Manufacturer's specifications;
2. Instruction books;
3. Samples, color charts, and similar items; and
4. All drawings, catalogs, or parts thereof, manufacturer's specifications, and data, samples, instructions, written guarantees, and other information specified or necessary:
 - a. For Engineer to determine that the equipment and materials conform with the design concept and comply with the intent of the Contract Documents;
 - b. For the proper erection, installation, operation, and maintenance of the equipment and materials which Engineer will review for general content but not for substance; and
 - c. For Engineer to determine what supports, anchorages, structural details, connections, and services are required for the equipment and materials, and the effects on contiguous or related structures, equipment, and materials.
5. Data submitted shall be complete with respect to dimensions, design criteria, materials of construction, and standards compliance to enable Engineer to review the information effectively. Where standard drawings are furnished which cover a number of variations of the general class of equipment, each such drawing shall be individually annotated to describe exactly which parts of the drawing apply to the equipment being furnished. Such annotation shall also include proper identification of the submittal permanently attached to the drawing. Reproduction or copies of contract drawings or portions thereof will not be accepted as complete fabrication or erection drawings, but will be acceptable when used by Contractor as a drawing upon which to indicate information on erection or to identify detail drawings.

E. Instruction Books: Equipment instruction books shall be prepared by the manufacturer with loose-leaf pages mounted in durable covers and shall include but not be limited to the following:

1. Index and tabs;
2. Instructions for installation, start-up, operation, inspection, maintenance, parts lists, and recommended spare parts with corresponding exploded views and current prices, and data sheets showing model numbers;

3. Applicable drawings;
 4. Address of nearest manufacturer-authorized service facility;
 5. All additional data specified; and
 6. Delivered one (1) week prior to installation.
- F. **Engineer's Review:** Engineer will review and return shop drawings to Contractor with appropriate notations. Written guarantees and similar submittals received by Engineer will be reviewed for acceptance. Instruction books and similar submittals will be reviewed by Engineer for general content but not for substance. The approval for use of a separate item as such will not indicate approval for use of the assembly in which the item functions. Contractor shall make all modifications noted by Engineer at no additional cost to the Owner. Contractor shall make all modifications noted or indicated by Engineer and shall return revised prints, copies, or samples until accepted. Contractor shall direct specific attention in writing, or on revised submittals, to changes other than the modifications called for by Engineer on previous submittals. After submittals have been accepted, Contractor shall submit copies thereof for final distribution. Prints of accepted drawings transmitted for final distribution will not be further reviewed and are not to be revised. If errors are discovered during manufacture or fabrication, the submittal shall be corrected and resubmitted for review.
- G. **Distribution Submittals:** Distribution submittals shall not be required.
- H. **Acceptance by Engineer:** No work requiring a shop drawing shall be commenced or shipped until the submittal has been stamped "no exceptions taken" or "no exceptions taken - note markings" by Engineer. A copy or sample of each shop drawing shall be kept in good order by Contractor at the site.
- I. **Contractor's Responsibilities:** Engineer's acceptance of shop drawings will not relieve Contractor from his responsibility for any deviations from the requirements of the contract documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written approval to the specific deviation, nor shall any acceptance by Engineer relieve Contractor from responsibility for errors or omissions in shop drawings. Such deviation will be made a part of a contract amendment.
- J. This item shall include manufacturer's or fabricator's shop drawings and specifications, catalog cuts, material samples, color charts, written guarantees, etc.
- K. **Initial Submittals and All Resubmittals From Contractor:** Seven (7) copies of submittal, original copy of Contractor's letter of transmittal, and Cover Page to Engineer's Office. (If Contractor desires more than four reviewed submittals to be returned to him, such additional copies, in excess of the seven specified, shall be submitted to Engineer).
- L. **Distribution of Shop Drawings:** Upon receipt of each shop drawing, Engineer will review, stamp with appropriate action, and distribute initial and resubmittals as follows:
1. Four (4) copies of submittal (or more if required by Contractor) and original copy of Engineer's letter of transmittal to Contractor;
 2. One (1) copy of submittal and one copy of transmittal to the Owner;

3. One (1) copy of submittal and one copy of transmittal to Engineer's field office; and
 4. One (1) copy of submittal and one (1) copy of transmittal to Engineer's record department.
- M. Submittals of equipment instruction books to be as follows:
1. Initial Submittal: Four (4) copies to Engineer, one (1) copy returned to Contractor.
 2. Resubmittals: Four (4) copies to Engineer, one (1) copy returned to Contractor.
- N. Written Guarantees: Written guarantees shall be submitted in five (5) copies, with two (2) copies returned to Contractor. The same numbers apply for resubmittals.
- O. Reference Submittals: Compliance submittals for reference only will be submitted in six (6) copies.
- P. Engineer's Review: Engineer's review action stamp, appropriately completed, will appear on all shop drawings of Contractor when returned by Engineer.
- Q. Action Stamps: Engineer's action stamp, for use on submittals to be returned to Contractor, is self-explanatory as marked.

SC-6.20 Indemnification

Add a new paragraph immediately after Paragraph 6.20.A of the General Conditions which is to read as follows:

“It is expressly understood and agreed that while Owner and Engineer may have the right under this Contract to observe or otherwise review the Work, progress and operations of the Contractor, it is expressly understood and agreed that such observations shall not relieve the Contractor from any of its covenants and obligations hereunder. The Contractor shall be solely responsible and save the Owner and Engineer and their consultants, agents and employees harmless from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work, observing safety standards or regulations, or otherwise. The indemnification would include the use of unsafe or unacceptable materials in the construction or completion of the project, unacceptable materials in the construction or completion of the project, or the Contractor's failure to comply with any law, ordinance, or regulation, even though such act, omission, or work was done under the direct or indirect review of, or was observed by the Owner or Engineer.”

Add the following language at the end of Paragraph 6.20.B of the General Conditions:

“Nor shall the Contractor's obligations under Paragraph 6.20.A or 6.20.B in any way be limited by any insurance coverage which the Contractor may have or which may insure to his benefit.”

SC-6.22 Site Erosion and Sediment Control Measures

Add six new Paragraphs immediately after paragraph 6.21 of the General Conditions, which are to read as follows:

“6.22 Site Erosion and Sediment Control Measures

Every effort shall be made by the CONTRACTOR and subcontractors to prevent and correct problems associated with erosion and runoff processes which could occur during and after project construction. The efforts should be consistent with applicable local ordinances and the Nonpoint Source Pollution Control Guidance.

Whenever appropriate, the CONTRACTOR's efforts shall reflect the following engineering principles:

- a. When appropriate, land grading and excavating should be kept at a minimum to reduce the possibility of creating runoff and erosion problems which require extensive control measures.
- b. Whenever possible, topsoil should be removed and stockpiled before grading begins.
- c. Land exposure should be minimized in terms of area and time.
- d. Exposed areas subject to erosion should be covered as quickly as possible by means of mulching or vegetation.
- e. Natural vegetation should be retained whenever feasible.
- f. Early completion of stabilized drainage systems (temporary and permanent systems) will substantially reduce erosion potential.
- g. Roadways and parking lots should be paved or otherwise stabilized as soon as feasible.
- h. Clearing and grading should not be started until a firm construction schedule is known and can be effectively coordinated with grading and clearing activity.”

“6.23 WYPDES Construction Discharge Permits

Construction projects which will disturb 5 acres or more require coverage under the State of Wyoming General Permit for Storm Water Discharges Associated with Large Construction Activities. Construction projects which will disturb 1 acre or more but less than 5 acres require coverage under the State of Wyoming General Permit for Storm Water Discharges Associated with Small Construction Activities. CONTRACTOR is responsible for obtaining coverage under the appropriate permit and maintaining compliance until OWNER accepts the Work as complete. For additional information see <http://deq.state.wy.us/wqd/stormwater.asp> or contact Barb Sahl at 307-777-7570.

Certain construction activities such as dewatering, flushing, testing, and disinfection require coverage under the State of Wyoming General Permit for Temporary Discharges. CONTRACTOR is responsible for obtaining any necessary coverage and maintaining compliance. For more information see <http://deq.state.wy.us/wqd/pointsources.asp>”

“6.24 Air Quality Protection Measures

The CONTRACTOR shall adhere to effective dust control procedures as required under the Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 3 Section 2 (Emission standards for particulate matter), especially part (f). If asbestos is encountered during this project, the Contractor shall follow standards for handling according to WAQSR Chapter 3 Section 8. The CONTRACTOR shall adhere to proper trade waste and materials disposal according to WAQSR Chapter 10 Section 2.”

SC-9.03 Project Representative

Delete Paragraph 9.03.A of the General Conditions in its entirety and insert the following in its place:

- A. The Engineer will furnish a Resident Project Representative (RPR) for this project and the following is applicable:

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE.

The Engineer shall furnish a resident project representative (RPR), assistants, and other field staff to assist the Engineer in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress, and field checks of materials and equipment by the RPR and assistants, the Engineer shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work; but, the furnishing of such services will not make the Engineer responsible for or give the Engineer control over construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or responsibility for the Contractor's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of the Engineer in the Engineer's agreement with the Owner, and in the construction Contract Documents, and are further limited and described as follows:

1. General

RPR is the Engineer's agent at the site and will act as directed by and under the supervision of the Engineer and will confer with the Engineer regarding RPR's Actions. RPR's dealing in matters pertaining to the on-site work shall, in general, be with the Engineer and Contractor, keeping the Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of the Contractor. RPR shall generally communicate with the Owner with the knowledge of and under the direction of the Engineer. As agent for the Engineer, with express and implied supervisory authority, the RPR's authority shall be limited only by the limitations on authority placed upon the Engineer in the Contract Documents. The Contractor shall be entitled to rely upon the representations and instructions provided by the Resident Project Representative as agent for the Engineer,

2. Duties and Responsibilities of RPR

- a. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by the Contractor and consult with the Engineer concerning acceptability.
- b. Conferences and Meetings: Attend meetings with the Contractor, such as Pre-Construction Conferences, progress meetings, job conferences, and other project-related meetings, and prepare and circulate copies of minutes thereof.
- c. Liaison:
 - i. Serve as the Engineer's liaison with the Contractor's working principally through the Contractor's superintendent, and assist in understanding the intent of the Contract Documents; and assist the Engineer in serving as the Owner's liaison with the Contractor when the Contractor's operations affect the Owner's on-site operations.
 - ii. Assist in obtaining, from the Owner, additional details or information, when required, for proper execution of the Work.
- d. Shop Drawings and Samples:
 - i. Record date of receipt of Shop Drawings and Samples.

- ii. Receive samples, which are furnished at the site by Contractor, and notify the Engineer of availability of samples for examination.
 - iii. Advise the Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or sample, if the submittal has not been approved by the Engineer.
- e. Review of Work, Rejection of Defective Work, Inspections and Tests:
- i. Conduct on-site observations of the Work in progress to assist the Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - ii. Report to the Engineer whenever the RPR believes that any Work is unsatisfactory, faulty, or defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the Engineer of Work that the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
 - iii. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records thereof, and observe, record and report to the Engineer appropriate details relative to the test procedures and start-ups.
 - iv. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to the Engineer.
- f. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed, and transmit, to the Contractor, clarifications and interpretations as issued by the Engineer.
- g. Modifications: Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications, and report with RPR's recommendations to the Engineer. Transmit, to the Contractor, decisions, as issued by the Engineer.
- h. Records:
- i. Maintain orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, re-productions of original Contract Documents, including all work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, the Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - ii. Keep a diary or log book, recording the Contractor hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific

observations in more detail, as in the case of observing test procedures; and send copies to the Engineer.

- iii. Record names, addresses, and telephone numbers of all the Contractor's, subcontractors, and major suppliers of materials and equipment.
- i. Reports
 - i. Furnish the Engineer periodic reports, as required, on progress of the Work and of the Contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - ii. Consult with the Engineer, in advance of scheduled major tests, inspections or start of important phases of the Work.
 - iii. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from the Contractor and recommended to the Engineer Change Orders, Work Directive Changes, and Field Orders.
 - iv. Report immediately to the Engineer and Owner, upon the occurrence of any accident.
- j. Payment Requests: Review applications for payment with the Contractor for compliance with the established procedure for their submission, and forward with recommendations to the Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the site, but not incorporated in the Work.
- k. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operating manuals, and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the Engineer for review and forwarded to the Owner prior to final payment for the Work.
- l. Completion
 - i. Before the Engineer issues a Certificate of Substantial Completion, submit to the Contractor a list of observed items requiring completion or correction.
 - ii. Conduct final inspection in the company of the Engineer, Owner, and Contractor, and prepare a final list of items to be completed or corrected.
 - iii. Observe that all items on a final list have been completed or corrected, and make recommendations to the Engineer concerning acceptance.

3. Limitations of Authority

Resident Project Representative:

- a. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by the Engineer.

- b. Shall not exceed limitations of the Engineer’s authority, as set forth in the Contract Documents.
- c. Shall not undertake any of the responsibilities of the Contractor, Subcontractors, or Contractor’s Superintendent.
- d. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.
- e. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
- f. Shall not accept Shop Drawings or sample submittals from anyone other than the Contractor.
- g. Shall not authorize the Owner to occupy the Project in whole or part.
- h. Shall not participate in specialized field or laboratory field or laboratory tests or inspections conducted by others, except as specifically authorized by the Engineer.

SC-10.05 Claims

Delete Paragraph 10.05.E of the General Conditions in its entirety and insert the following in its place:

“E. Engineer’s written action under paragraph 10.05.C or denial pursuant to Paragraph 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor.”

SC-11.01 Cost of the Work

Add the following to the end of Paragraph 11.01.A.1 of the General Conditions which is to read as follows:

“The Contractor shall receive 25% of direct labor costs for the payroll fringe benefit items listed in paragraph 11.01.A.1 in lieu of the method of payment provided therein.”

SC-11.03 Unit Price Work

Delete Paragraph 11.03.D of the General Conditions in its entirety and insert the following in its place:

- “D. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:
- 1. The total cost of a particular item of Unit Price Work amounts to 15% or more of the Contract Price, and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 25% from the estimated quantity of such item indicated in the Agreement; and
 - 2. if there is no corresponding adjustment with respect to any other item or work; and
 - 3. if the Contractor believes that the Contractor has incurred additional expense as a result thereof; or

4. if the Owner believes that the quantity variation entitles it to an adjustment in the unit price, either the Owner or Contractor may make a claim for an adjustment in the Contract Unit Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.”

SC-12.01 Change of Contract Price

Add the following to the end of Paragraph 12.01.A of the General Conditions which is to read as follows:

“The Contractor agrees to make no claim for damages for delay in the performance of this Contract caused by any act or failure act of the Owner, Engineer or designated agents or representative, whether such delays are avoidable or unavoidable; that the Contractor agrees that such delays shall solely and fully be compensated for by an extension of time to complete performance of the work as provided herein.

Any claim for an increase or decrease in the Contract Price originated by a Subcontractor shall be evaluated by the Contractor. The Contractor shall determine the validity of said claim, and if the Contractor determines that said claim is valid, the Contractor shall so state in writing to the Owner in accordance with all the requirements of Paragraph 10.05.B.”

SC-12.03 Delays

Delete Paragraph 12.03.A through 12.03.C in their entirety and insert the following in its place:

- A. Where Contractor is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of the 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. The Contractor agrees to make no claim for damages for delay in performance of this contract caused by any act or failure to act of the Owner, Engineer, or designated agents or representatives whether such delays are avoidable or unavoidable. The Contractor agrees that such delays shall solely and fully be compensated for by an extension of Contract Time to complete performance of the Work as provided herein.
- B. Provisions for liquidated damages are set forth in the Agreement. The liquidated damages identified therein include among the other costs to the Owner an amount for maintaining the necessary engineering forces engaged beyond the time identified in the Agreement for Substantial Completion. The liquidated damages will be deducted from the Contractor’s progress estimates and/or final payment and the engineering fees shall be paid by the Owner to the Engineer from the monies withheld. “

SC-13.07 Correction Period

Delete paragraph 13.07.A through 13.07.E of the General Conditions in its entirety and insert the following in its place:

“If within one (1) year after the date of formal acceptance by Moorcroft Town Council 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 Contact Documents, any work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Warranty and the Owner’s written instructions, either correct such defective work, or if it has been rejected by the Owner, remove it from the site and replace it with non-defective work. If the Contractor does not promptly comply with the terms of such instructions, or in an actual emergency where delay could cause serious risk of loss or damage, the Owner may have the defective work corrected or the rejected work removed and

replaced, and all direct, indirect, and consequential costs of such removal and replacement, (including, but not limited to, fees and charges of engineer, architects, attorneys, and other professionals), will be paid by the Contractor. In special circumstances where a particular item of equipment or specified part of the work is placed in continuous service before Substantial Completion of all the Work, the correction period for that item or part of the Work, may start from the date it is placed in continuous service if so provided in the specifications, special provisions, written amendment, or by written agreement between the Owner and the Contractor.”

SC-14.02 Progress Payments

Delete paragraph 14.02.C.1 of the General Conditions in its entirety, and insert the following in its place:

1. The pay request construction cutoff date shall be the last day of each month. Pay Requests shall be submitted to the Engineer for review within 3 days after the cutoff date. The payment requests will be processed and submitted to the Town Council for approval on the second Monday of each month. The Contractor shall be paid within 45 days of Council approval. If the Pay Requests are not received at the times stated above, the Pay Request will not be processed for payment until the following processing date. The Pay Requests shall be submitted on the proper approved forms and any discrepancies between the Contractor and the Engineer shall be settled prior to this submittal to the Town Council. Proper submittal of the Pay Request will include Engineer’s and Contractor’s signatures on the Pay Requests, an itemized Pay Request form, signed Change Orders and signed Change Proposal Requests. Any minor discrepancies will be corrected on the processing date. Any major discrepancies will cause the processing to be lengthened and the payment will not be made until the next processing date.

Add the following new Paragraph 14.02.E to the General Conditions which are to read as follows:

“E. Retainage

1. Retainage shall be retained in an interest bearing account in the name of the Contractor. The interest bearing account will be assigned to the Owner until the contract is completed satisfactorily and finally accepted by the Owner.
2. The Owner may, upon written request by the Contractor, authorize payment from the retainage, provided that the Owner determines that satisfactory progress is being made in all phases of the contract. Before payment is made the Owner shall determine that satisfactory and substantial reasons exist for the payment and shall require the written approval from any surety furnishings bonds required by this Agreement for the contract work.
3. The Owner shall enter into an interest bearing deposit agreement with any depository designated by the Contractor, after notice to the surety, to provide an agent for the custodial care and servicing of any deposits placed with the depository. The requirement for an interest bearing deposit agreement shall apply only to contracts of more than twenty-five thousand dollars (\$25,000). The services shall include the safe keeping of the obligations and rendering of all services required to effectuate the purposes of Wyoming State Statute W.S.16-6-701 through W.S.16-6-706.
4. The Owner or any depository designated by the Contractor to serve as custodian for the retainage monies shall collect all interest and income when due on retainage so deposited and shall pay them, when and as collected, to the Contractor or as otherwise instructed by the Contractor. Any expense incurred for this service shall not be charged to the Owner.

5. The requirements of 14.02.E.1 through 14.02.E.3 above shall not apply in the case of contract made or awarded by the Owner if a part of the contract price is to be paid with funds from the federal government or from some other source and if the federal government or other funding source has requirements concerning retainage or payment of funds which are applicable to the contract and which are inconsistent with these Articles.
6. The Contractor shall provide the Owner with an interest bearing deposit agreement prior to issuance of the Notice to Proceed.”

SC-14.03 Contractor’s Warranty of Title

Add the following Paragraph 14.03.B of the General Conditions:

- “B. Neither recommendation of any progress payment by Engineer nor payment by the Owner to Contractor, nor any use of occupancy of the Work or any part thereof will release the Contractor from complying with the Contract Documents. Specifically the Contractor shall maintain in accordance with Article 5, property insurance on all Work, materials, and equipment whether incorporated in the project or not and whether included in an application for payment or not, for the full insurable value thereof. Passing title to Owner for materials and equipment included in an application for payment does not relieve the Contractor of the Contractor’s obligation to provide insurance (including property insurance), as required in Article 5 of the General Conditions and these Supplementary Conditions. All insurance shall remain in effect as provided in Article 5.”

SC-14.07 Final Payment

Delete Paragraph 14.07.C of the General Conditions in its entirety and insert the following in its place:

“C. Payment Becomes Due

1. The Owner shall not be required to make final payment to the Contractor until such time as Wyoming State Statutes W.S. 16-6-116 and W.S. 16-6-117 have been fulfilled.
2. If no claims or liens have been filed within a forty-one (41) day period after completion and acceptance of the project, the retained percentage shall be paid (final estimate) to Contractor within twenty (20) days of the expiration thereof.
3. Should any liens or claims be filed, retainage equal to the amount of the lien or claim will be held until a satisfactory agreement is reached between the Owner, Contractor, and Contractor’s surety.”

SC-16.0 Dispute Resolution

Delete Paragraph 16.01 of the General Conditions in its entirety and insert the following in its place:

16.01 *Methods and Procedures*

The Owner and Contractor acknowledge that during a construction project, the Contractor must ensure that construction activities have only very limited impacts on surrounding property and individuals who may be in the vicinity of the construction project. It is essential that claims for injuries, which are related to public construction projects, be resolved as quickly as possible. In order to resolve claims as quickly as possible, the Contractor shall arbitrate all individual claims up to \$15,000 in value of property damage or personal injuries, from individuals who are not parties to this contract and who agree to have their claim decided by binding arbitration. This

section shall not apply to statutory claims against the Contractor from material men or laborers, for work or materials.

Claims must be in writing and may be submitted to the Contractor and the Owner at any time before the end of the advertising period for final payment to the Contractor.

The Contractor shall review and settle all claims within 30 days of their receipt or participate in arbitration pursuant to the terms of this section in the event the claimant elects to proceed with arbitration following the end of the 30 day period. The Owner shall deduct the amount of all claims from money due under the contract until such time as the claims are settled through the negotiation of the parties or the arbitration process. If the claimant does not initiate arbitration within 10 days of receipt of a notice that the Contractor or its agent has denied the claim or within 10 days of the end of the 30 day period for settlement, whichever comes first, then the Owner will take no further action on their claim and the provisions of the next paragraph shall not apply.

The Owner shall pay the expenses of the Arbitrator, who shall be selected by the Owner with the agreement of the Contractor and the claimant. The arbitration shall be governed by the rules of the American Arbitration Association in effect as of the effective date of the Contract. The arbitrator's decision shall be binding on the Contractor and the claimant and if the decision includes an award in favor of the claimant, that amount shall be paid to the claimant out of the funds remaining due on the Contract. By entering into a contract with the Owner, the Contractor agrees in advance to the payment of the arbitrator's award out of the retainage established for this contract. The Owner shall have no obligation to pay any amounts in excess of what it possesses as retainage under the contract.

CONSTRUCTION SPECIFICATIONS

CONSTRUCTION SPECIFICATIONS

The Construction Specifications of the Contract Documents are included in the 2000 Edition of the Wyoming Public Works Standard Specifications, and are hereby incorporated by reference. Changes, amendments, and supplements, if any, to the Construction Specifications are contained in the Special Provisions.

SPECIAL PROVISIONS

SPECIAL PROVISIONS

These Special Provisions amend, supplement, or revise the Standard Construction Specifications of the Contract Documents; and other provisions of the Contract Documents as indicated below. All provisions of the Construction Specifications, which are, not so amended, supplemented, or revised remain in full force and effect.

SP-1 LIMITATIONS OF OPERATIONS

The CONTRACTOR shall organize and schedule his operations and that of his SUBCONTRACTORS to complete the work in accordance with the following limitations. The project CPM schedule shall be prepared to show compliance with these requirements.

All necessary barricades and other detour signing shall be in place prior to closing any street lanes or private access roads to traffic.

Once the CONTRACTOR has started work on the project, he shall continue his progress without delay. Only weather days, legal holidays and Sundays shall be acceptable reasons for work not occurring on the project once work has begun.

SP-2 EQUIPMENT LOAD LIMITS

The CONTRACTOR shall observe legal load limits on all streets. The ENGINEER may request certification from the CONTRACTOR to verify that loads are within those limits. The ENGINEER may also request the authorities to bring in portable weigh scales to verify. Construction site loading may have to be adjusted so as to prevent damage to existing pavement and to newly constructed areas. Any damage that does occur shall be repaired to the OWNER'S satisfaction at the CONTRACTOR'S expense.

The CONTRACTOR shall access the Project site through the existing roads that intersect the various streets where work is to be completed. The CONTRACTOR shall obey all "truck route" postings when accessing the Project site.

SP-3 ASPHALTIC CONCRETE PAVING

Asphalt concrete pavement material shall meet the requirements of the Wyoming Public Works Standard Specifications for road mix bituminous pavements. Thicknesses are as shown on the plans.

Asphalt binder material shall be Performance Grade PG 64-22.

The gradation for the Asphaltic Concrete Pavement shall be $\frac{3}{4}$ " maximum aggregate, and meet the requirements as specified in Section 02190 2.05.

Marshall Design Criteria for surfacing and bases are as follows:

	Streets 10 ⁴ < Design EAL < 10 ⁶
Compaction, number of blow each end of specimen	50
Stability (lbs. Minimum)	2000
Flow (0.01 in.)	8-16
Percent Air Voids ASTM D 3203	4-5
Tensile Strength Ratio AASHTO T 283	>=75

Voids in Mineral Aggregate (VMA) (%)		
Maximum Nominal Size		
¾ in	½ in	¾ in
12.0 – 15.0	13.0 – 16.0	13.0 – 16.0

All edges shall be cleaned and a tack coat shall be applied to the existing bituminous or concrete surfaces, including the vertical surfaces of existing pavements prior to commencing asphalt work. Work to be in accordance with Section 02551. CONTRACTOR shall use suitable equipment to prevent overspray of tack material onto the top surfaces of adjoining concrete pavement. All costs associated therewith shall be incidental to the construction and no separate payment will be made.

MATERIALS AND RATES			
RATES AND WEIGHTS SHOWN ARE APPROXIMATE AND ARE SUBJECT TO ADJUSTMENT DURING CONSTRUCTION			
HOT PLANT MIX BITUMINOUS PAVEMENT			
ITEM	GRADE	ESTIMATED RATE	REMARKS
AGGREGATE	¾" MAX NOMINAL	141.03 LBS/CF (DRY)	CONTRACTOR FURNISHED
PG 64-22 ASPHALT CEMENT		7.27 LBS/CF (4.9% OF 148.3)	
HOT PLANT MIX BIT PVMT	TYPE I		

SP-4 EXISTING SEWER SERVICES

Sewer service shall be maintained at all times. Temporary services or pumping may be required. This will be incidental to the project.

SP-5 UTILITY CROSSINGS

All utility crossings will be paid as each utility crossed. This shall include excavation, **PRODUCTION SLOWDOWN** and all other incidentals required to complete the work. All cable television lines have been abandoned by the utility owner. Located television lines are shown on the plans. Utility crossings will not be paid for these lines.

SP-6 SANITARY SEWER SYSTEMS

DELETE PART 4 METHOD OF MEASUREMENT AND BASIS PAYMENT in its entirety and replace with:

PART 4 METHOD OF MEASUREMENT AND PAYMENT

4.01 METHOD OF MEASUREMENT

A. SEWER MAIN

1. Measurement of sewer mains shall be made in lineal feet (meters) of the various sizes and classes, along the centerline of pipe from center to center of manholes.

B. MANHOLES

1. Measurement of manholes shall be made by numerical count each.

C. SANITARY SEWER SERVICE

1. Measurement of sewer services shall be made in lineal feet (meters) of the various sizes and classes, along the centerline of pipe from sanitary sewer service wye to limits shown on drawings.

D. SANITARY SEWER SERVICE CLEANOUT

1. Measurement of sanitary sewer service cleanouts shall be made by numerical count of the various sizes and classes installed.

E. TYPE 2 BEDDING

1. Measurement of type 2 bedding shall be measured by the cubic yard (CY) of bedding placed and compacted.

2. No separate measurement will be made for any other items under this section. Full compensation shall be considered as included in the prices paid for various contract items and no additional compensation will be allowed.

4.02 BASIS OF PAYMENT

A. SEWER MAIN

1. Payment for sewer main will be made at the contract unit price bid per lineal foot of the various sizes and classes called for, which the price shall include furnishing and installing pipe; furnishing, placing and compacting Type 1 Pipe Bedding; all trench excavation and backfill compaction; special requirements for connection to manholes; utility crossings which shall include production slowdown, relocation of utilities and other costs associated with the crossing; testing and all other work necessary or incidental for completion of the item.

B. MANHOLES

1. Payment for manholes will be made at the Contract Unit Price Bid each for a typical depth of eight (8) feet; which price shall include furnishing and installing the manhole and all additional excavation, backfill, manhole ring and cover required for the installation and completion of the item.

2. Additional sanitary sewer Manhole depth will be additional vertical feet of manhole depth installed to the nearest tenth foot (0.1') and will be calculated by subtracting eight (8) feet from the

total depth measured from the top of the cover to the lowest invert. Payment shall include manhole section, steps, joint sealer, vacuum testing, and all other incidentals to complete the time.

C. SANITARY SEWER SERVICE

1. This item shall be measured by the lineal foot of sanitary sewer service installed. Payment shall include furnishing and installing appropriate sizes and classes of sanitary sewer service line, wyes, and locating tape from the main to the limits shown on the Drawings; furnishing and installing all required fittings and locating ball if required; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

D. SANITARY SEWER SERVICE CLEANOUT

1. This item shall be measured by the numerical count of sanitary sewer service cleanouts installed. Payment shall include excavation and backfill; furnishing and installing appropriate sizes and classes of pipe, fittings and screw plug and all labor, tools, and other necessary items required to complete the item of work.

E. TYPE 2 BEDDING

1. Payment shall include furnishing and installing the bedding; compacting the bedding; and all labor, equipment, tools and incidentals necessary to complete the item.

2. This item will only be paid for areas where existing material is not acceptable and must be approved by Engineer prior to being incorporated into the work.

SP-7 SANITARY SEWER PIPE BURSTING

PART 1 GENERAL

1.1 DESCRIPTION

A. This clause includes requirements to rehabilitate existing sanitary sewers by the pipe bursting method. This method involves splitting the existing pipe and immediately installing a new polyethylene pipe, reconnecting existing sewer house connections, television inspection of the polyethylene pipe and complete installation in accordance with the Contract documents.

1.2 QUALITY ASSURANCE

A. The CONTRACTOR shall be certified by the particular Pipe Bursting System Manufacturer that such firm is licensed installer of their system.

B. Polyethylene pipe jointing shall be performed by personnel trained in the use of thermal butt fusion equipment and recommended methods for new pipe connections. Personnel directly involved with installing the new pipe shall receive training in the proper methods for handling and installing the polyethylene pipe. Training shall be performed by a qualified representative.

- C. The CONTRACTOR shall hold the OWNER and ENGINEER harmless in any legal action resulting from patent infringements.
- D. The CONTRACTOR shall have a minimum of 2 years experience using the pipe-bursting method and shall have installed no less than 5 thousand feet.
- E. The CONTRACTOR must have successfully completed at least one (1) job, similar in scope, to the requirements of pipe bursting set forth in these bid documents.

1.3 SHOP DRAWINGS

A. Submit the following CONTRACTOR's Drawings

1. Shop drawings, catalog data, and manufacturer's technical data showing complete information on material composition, physical properties, and dimensions of new pipe and fittings. Include manufacturer's recommendation for handling, storage, and repair of pipe and fittings damaged.
2. Method of construction and restoration of existing sewer service connections. This shall include detail drawings and written description of the entire construction procedure to install pipe, bypass sewage flow and reconnection of sewer service connections.
3. Certification of workmen training for installing pipe.
4. Television inspection reports and video tapes made after new pipe installation.

1.4 DELIVERY, STORAGE AND HANDLING

- A. Transport, handle, and store pipe and fittings as recommended by manufacturer.
- B. If new pipe and fittings become damaged before or during installation, it shall be repaired as recommended by the manufacturer or replaced as required by the ENGINEER at the CONTRACTOR's expense.
- C. Deliver, store and handle other materials as required to prevent damage.

1.5 METHODS FOR NEW PIPE INSTALLATION

The methods approved for rehabilitation of existing sanitary sewers by pipe bursting and installation of new polyethylene pipe are the following:

A. Static Pipe Bursting

Pipe bursting tool shall be static. The bursting action of the tool shall increase the external dimensions sufficiently, causing breakage of the pipe at the same time expanding the surrounding ground. This action shall not only break the pipe, but also create the void into which the burster can be statically pulled which enables

forward progress to be made. Simultaneously, the new polyethylene pipe, directly attached to the expander, shall also move forward.

The static pulling frame shall be telescopic in design to allow the cutting head to release at the termination of the pull. This also provides minimal trench length by telescopic adjustment.

Quick lock bursting rods are required to guarantee snap lock connections. Quick Lock rods also stabilize cutting wheels at a 90° plane to invert pipe. Threaded bursting rods are not allowed. This insures the same cutting location eliminating threaded rod failures and turning of rods which effect cutting ability of blades.

The unit must maintain automatic thrust and pull back.

The static unit is capable of pipe bursting in two directions from the same excavation.

The location and number of insertion and receiving excavations shall be planned by the CONTRACTOR and submitted in writing for approval by the ENGINEER 10 working days prior to excavation.

All excavations shall be properly sheeted/shored in accordance with relevant specifications for trench safety systems. Any damage resulting from improperly shored excavations shall be corrected to the satisfaction of the ENGINEER with no compensation due to the CONTRACTOR.

All open excavations shall be kept secure at all times by the use of barricades with appropriate lights and signs, construction tape, covering with steel plates, etc., or as directed by the ENGINEER.

One or more receiving pits shall be excavated at the end(s) of the sewer pipe to be replaced or at appropriate points within the length of the existing pipe. Pit shall be centered over the existing pipe.

The number of pits for machine and pipe insertion shall be the minimum necessary to most efficiently accomplish the work. The CONTRACTOR shall give consideration to the use of excavation required for other purposes such as for where manholes are used as machine or new pipe insertion pits, the CONTRACTOR shall identify such manholes and replace them at no additional cost to the OWNER if damaged. Any manhole modification or replacement required shall be considered incidental to the installation of the new pipe.

The cost of diversion pumping around a manhole or insertion pit, if required, from a manhole upstream to a manhole downstream, shall be incidental to the installation of the new pipe.

B. Pneumatic Pipe Bursting

The pipe bursting tool shall be designed and manufactured to force its way through existing pipe materials by fragmenting the pipe and compressing the old pipe sections into the surrounding soil as it progresses. The bursting unit shall

be pneumatic and shall generate sufficient force to burst and compact the existing pipe line. See manufacturers' specifications for what size tool should be used in what diameter of pipe, as well as parameters of what size tools for percentage of upsize allowed.

The pipe bursting tool shall be pulled through the sewer by a winch located at either the upstream or downstream manhole. The bursting unit shall pull the polyethylene pipe with it as it moves forward. The bursting head shall incorporate a shield/expander to prevent collapse of the hole ahead of the PE pipe insertion.

The pipe bursting tool shall be pneumatic. The bursting action of the tool shall increase the external dimensions sufficiently, causing breakage of the pipe at the same time expanding the surrounding ground. This action shall not only break the pipe but also create the void into which the burster can be winched and enables forward progress to be made. At the same time the polyethylene pipe, directly attached to the sleeve on the rear of the burster, shall also move forward.

The burster shall have its own forward momentum while being assisted by winching. A hydraulic winch shall give the burster friction by which it can be moved forward. To form a complete operating system, the burster must be matched to a constant tension hydraulic winching system.

1. WINCH UNIT:

A winch shall be attached to the front of the bursting unit, connecting to or through the advanced guide head technology. The winch shall have twin capstan with twin hydraulic drive motors and twin gear boxes for independent operation.

The winch shall be hydraulically operated providing a constant tension throughout the operation. The winch shall be of the constant tension type but shall be fitted with a direct reading load gauge to measure the winching load.

The winch must automatically maintain a constant tension at a set tonnage reading.

The constant tension winch shall supply sufficient cable in one continuous length so that the pull may be continuous between approved winching points.

The winch, cable and cable drum must be provided with safety cage and supports so that it may be operated safely without injury to persons or property.

The CONTRACTOR shall provide a system of guide pulleys and bracing at the exit pit to minimize cable contact with the existing line between launch and exit pits.

The supports to the trench shoring in the insertion pit shall remain completely separate from the winch boom support system and should be so designed that neither the pipe nor the winch cable shall be in contact with them.

The winch shall have twin capstan with twin hydraulic drive motors and twin gear boxes for independent operation. In no case shall the winch cable storage spool be considered part of the twin capstan pulling system.

Equipment used to perform the work shall be located away from buildings so as not to create noise impact. Provide a silent engine compartment with the winch to reduce machine noise as required meeting local requirements.

The CONTRACTOR shall install all pulleys, rollers, bumpers, alignment control devices and other equipment required to protect existing manholes, and to protect the pipe from damage during installation. Lubrication may be used as recommended by the manufacturer. Under no circumstances will the pipe be stressed beyond its elastic limit.

Winch line is to be centered in pipe to be burst with adjustable boom.

The installed pipe shall be allowed the manufacturer's recommended amount of time, but not less than four (4) hours, for cooling and relaxation due to tensile stressing prior to any reconnection of service lines, sealing of the annulus or backfilling of the insertion pit. Sufficient excess length of new pipe, but not less than four (4) inches, shall be allowed to protrude into the manhole to provide for occurrence. Restraint of pipe ends shall be achieved by means of Electrofusion couplings. The Electrofusion couplings shall be slipped over pipe ends against manhole wall and fused in place. Installation of Electrofusion couplings shall be done in accordance with the manufacturers recommended procedures.

Following the relaxation period, the annular space may be sealed. Sealing shall be made with material approved by the ENGINEER and/or his representative and shall extend a minimum of eight (8) inches into the manhole wall in such a manner as to form a smooth, uniform, watertight joint.

The terminating pipe ends in manholes shall be connected by Electrofusion couplings to eliminate ground water infiltration. Installations of Electrofusion couplings shall be done in accordance with the manufacturers recommended procedures.

PART 2 MATERIALS

2.1 POLYETHYLENE PLASTIC PIPE

- A. Polyethylene Plastic Pipe shall be high density polyethylene pipe and meet the applicable requirements of ASTM F714 Polyethylene (PE) Plastic Pipe (SDR-PR) based on outside diameter, ASTM D1248, ASTM D3550.

- B. Sizes of the insertions to be used shall be such to renew the sewer to its original or greater flow capacity.
- C. All pipes shall be made of virgin material. No rework except that obtained from the manufacturer's own production of the same formulation shall be used.
- D. The liner material shall be manufactured from a High Density High Molecular weight polyethylene compound which conforms to ASTM D- 1248 and meets the requirements for Type III, Class C, Grade P-34, Category 5, and has a PPI rating of PE 3408.
- E. The body of the pipe produced from this resin shall have a minimum cell classification of 345444C under ASTM D-3350 and the inner wall shall be Light in color and have a minimum cell classification of 345444E under ASTM D-3350. A higher cell classification limit which gives a desirable higher primary property, per ASTM D-3350 may also be accepted by the ENGINEER at no extra cost to the OWNER. The value for the Hydrostatic Design basis shall not be less than 1600 PSI (11.03 MPA) per ASTM D-2837.
- F. The polyethylene pipe shall have light colored interior fully bonded and co-extruded pipe structure. The bond between the layers shall be strong and uniform. It shall not be possible to separate any two layers with a probe or point of a knife blade so that the layers separate cleanly at any point, nor shall separation of bond occur, between layers, during testing performed under the requirements of this specification.
- G. The pipe shall be homogenous throughout and shall be free of visible cracks, holes, foreign material, blisters, or other deleterious faults.
- H. Standard Dimension Ratios: The minimum wall thickness of the polyethylene pipe shall meet the following:

Depth of Cover (Feet)	Minimum SDR of Pipe
0 – 16.0	21
>16.1	17

- I. Material color shall be black on the outside for ultraviolet protection and have 10 mils of a light-colored inner layer for enhanced television inspection.

2.02 TESTS

- A. Tests for compliance with this specification shall be made as specified herein and in accordance with the applicable ASTM Specification. A certificate with this specification shall be furnished, upon request, by the manufacturer for all material furnished under this specification. Polyethylene plastic pipe and fittings may be rejected if they fail to meet any requirements of this specification.

PART 3 SEWER SERVICE CONNECTIONS

- A. All sewer service connections shall be identified, located and excavated prior to the pipe insertion to expedite reconnection. Upon commencement, pipe insertion shall be continuous and without interruption from one manhole to another, except as approved by the ENGINEER and/or his representative. Upon completion of insertion of the new pipe, the CONTRACTOR shall expedite the reconnection of services so as to minimize any inconvenience to the customers.
- B. Sewer service connections shall be connected to the new pipe by mechanical methods or electrofusion methods. Once the saddle is secured in place, a hole shall be drilled full inside diameter of saddle outlet in pipe liner.
 - 1. Mechanical saddles shall be made of polyethylene pipe compound that meets the requirements of ASTM D1248, Class C, have stainless steel straps and fasteners, neoprene gasket and backup plate. Mechanical saddles shall be Strap-On-Saddle Type as manufactured by Driscopipe or Tapping Saddle manufactured by Fernco Joint Sealer Co., DFW Plastics, Inc. or approved equal.
 - 2. An HDPE branch saddle may be sidewall fused onto the O.D. of the installed HDPE pipe. This may be done with commercially available sidewall Fusion machine or installed with "Unicore" HDPE splice under the base of saddle and heated to pipe O.D.

PART 4 PREPARATION

4.1 BYPASSING SEWAGE

- A. By-Pass Pumping: The CONTRACTOR, when and where required, shall provide diversion for the pipe bursting/replacement process. The pumps and by-pass lines shall be of adequate capacity and size to handle all flows. All costs for by-pass pumping, required during installation of the pipe shall be subsidiary to the sanitary sewer installation.
- B. The CONTRACTOR shall be responsible for continuity of sanitary sewer service to each facility connected to the section of sewer during the execution of the work.
- C. If sewage backup occurs and enters buildings, the CONTRACTOR shall be responsible for clean-up, repair, property damage cost and claims.

4.2 TELEVISION INSPECTION

- A. Television inspection of pipelines shall be performed by experienced personnel trained in locating breaks, obstacles and service connections by closed circuit color television. All costs of television inspection shall be subsidiary to the sanitary sewer installation.

B. Television inspection shall include the following:

1. Video tapes (post) to be submitted to the OWNER before final payment.
2. Video tapes to remain property of the OWNER; CONTRACTOR to retain second copy for his use.
3. All flows tributary to reach of sewer being inspected are to be completely by-passed around the reach during inspection if necessary and required by the ENGINEER.
4. Post construction video tape upon completion of reconstruction of each reach of sewer with the voice description, as appropriate with stationing of services indicated. Data and stationing to be on video.
5. Should any portion of the inspection tapes be of inadequate quality or coverage, as determined by the OWNER the CONTRACTOR will have the portion reinspected and videotaped at no additional expense to the OWNER.

PART 5 CONSTRUCTION METHODS

- A. Insertion or launching pits shall only be allowed at locations of existing or proposed manholes, unless otherwise approved by ENGINEER.
- B. Equipment used to perform the work shall be located away from buildings so as to lessen the noise impact. Provide silencers or other devices to reduce machine noise as required to meet requirements.
- C. The CONTRACTOR shall install all pulleys, rollers, bumpers, alignment control devices and other equipment required to protect existing manholes, and to protect the pipe from damage during installation. Lubrication may be used as recommended by the manufacturer. Under no circumstances will the pipe be stressed beyond its yield stress.
- D. The annular space shall be sealed at the manhole. Sealing shall be made with material approved by the ENGINEER and/or his representative and shall extend a minimum of eight (8) inches into the manhole wall in such a manner as to form smooth, uniform, watertight joint.

E. FIELD TESTING

1. After the existing sewer is completely replaced, internal inspection with television camera and video tape shall be carried out as required. The finished tape shall be continuous over the entire length of the sewer between two manholes and be free from visual defects.
2. Defects which may affect the integrity or strength of the pipe in the opinion of the ENGINEER shall be repaired or the pipe replaced at the CONTRACTOR's expense.

PART 6 PIPE JOINING

- A. The polyethylene pipe shall be assembled and joined at the site using the thermal butt-fusion method to provide a leak proof joint. Threaded or solvent-cement joints and connections are not permitted. All equipment and procedures used shall be used in strict compliance with the manufacturer's recommendations. Fusing shall be accomplished by personnel certified as fusion technicians by a manufacturer of polyethylene pipe and/or fusing equipment.
- B. The butt-fused joint shall be properly aligned and shall have uniform roll-back beads resulting from the use of proper temperature and pressure. The joint surfaces shall be smooth. The fused joint shall be watertight and shall have tensile strength equal to that of the pipe. All joints shall be subject to acceptance by the ENGINEER and/or his representative prior to insertion. All defective joints shall be cut out and replaced at no cost to the OWNER. Any section of the pipe with a gash, blister, abrasion, nick, scar, or other deleterious fault greater in depth than ten percent (10%) of the wall thickness, shall not be used and must be removed from the site. However, a defective area of the pipe may be cut out and the joint fused in accordance with the procedures stated above. In addition, any section of pipe having other defects such as concentrated ridges, discoloration, excessive spot roughness, pitting, variable wall thickness or any other defect of manufacturing or handling as determined by the ENGINEER and/or his representative shall be discarded and not used.
- C. Terminal sections of pipe that are joined within the insertion pit shall be connected with a full circle pipe repair clamp. The butt gap between pipe ends shall not exceed one-half (1/2) inch.

PART 7 METHOD OF MEASUREMENT AND BASIS OF PAYMENT

- A. The inserted pipe shall be paid for per linear foot of the size pipe specified and shall include all pipe bedding, backfill material, annulus sealing material and launching pits. Locating and reconstruction of services and all reconnections of services shall be paid for per each connection made, including fittings and pipe.
- B. The work performed as prescribed by this item will be paid at the unit price per linear foot of sanitary sewer by pipe bursting/replacement for the specified pipe diameter and location, per each for "Locate, reconstruct and reconnect" for the specified pipe diameter, which price shall be full compensation for the installation of the new pipe, furnishing and placing of all materials, labor, tools, equipment, cleaning, and preparation of the existing pipe to receive the new liner, and any other necessary to complete the project.
- C. Video inspection of final installed pipe shall be considered subsidiary to the cost of pipe installation and shall not be a separate pay item.
- D. The cost of any necessary by-pass pumping shall be considered subsidiary to the cost of pipe installation and shall not be a separate pay item.

PART 8 WARRANTY

- A. All work performed under this Contract shall be warranted to be free from defects in material and workmanship for a period of one year from the date of acceptance. If the ENGINEER determines that the process has failed during the warranty period, the CONTRACTOR will perform any and all repairs at no additional cost to the OWNER.

SP-8 SEEDING

SUMMARY

- Provide fertilizer
- Provide seeding and mulching

SUBMITTALS

Submit for approval product and maintenance data, and seed mixture.

DELIVERY, STORAGE AND HANDLING

- A. Deliver fertilizer in unopened containers bearing the manufacturer's statement of analysis.

Deliver, store, and handle other materials in accordance with manufacturer's instructions.

PART 2 PRODUCTS

MATERIALS

- A. Topsoil: Shall be preserved from areas disturbed by installation of sewer line. Topsoil shall be reasonably free of subsoil, clay lumps, brush, weeds, litter, roots, stumps, stones larger than two (2) inches (50 mm) in any dimension, or any other material which would inhibit the germination of seeds or the growth of the cover crop.
- B. Lawns, seed: New crop seed mixture, shall be composed of 20% Midnight Bluegrass, 20% Total Eclipse Bluegrass, 20% American Bluegrass, 20% Discovery Hard Fescue.

Fertilizer: Commercial grade of neutral character, with some elements derived from organic sources.

1. Lawns: Farm-type, such as 18-46-0, applied at five (5) pounds per 1000 square feet (SF) (2.44 kilograms per 100 sq. meters) of lawn area, or 16-20-0, at 7 pounds per 1000 SF (3.4 kilograms per 100 sq. meters). Provide nitrogen in a form that will be available to lawns during initial growth period. Established lawns shall not receive more than 1 ½ pounds of soluble nitrogen per thousand (1000) square feet (1.6 kilograms per 100 sq. meters), applied four (4) times annually.

2. Dryland seeding: Not less than a 2:1:1 ratio of nitrogen, phosphorous and potassium.

G. Dryland seed: With guaranteed 95% pure live seed.

Nardan Crested Wheatgrass	30%
Russian Wild Rye	20%
Y.B. Sweet Clover	15%
Slender Wheatgrass	10%
Oahe Intermediate Wheatgrass	10%
Fairway Crested Wheatgrass	5%
Western Wheatgrass	4%
Other	6%

These types and percentages may vary. Mixture may be available commercial as "Dryland Pasture Mix."

H. Mulch

Dryland seeding: Certified weed free small grain straw or native hay.

PART 3 EXECUTION

3.01 INSTALLATION

A. Topsoil: Spread topsoil to a uniform depth over all areas scheduled to receive lawns. Fertilize proposed lawns at rate specified herein. Fine grade areas to a firm even surface, free from lumps or stones. Installation of sod may be done immediately after fine grading, provided the bed is in good condition and not muddy or hard. If it is hard, scarify to a friable condition again.

Lawns, seed

If soils are predominately clayey or sandy, peat moss or manure shall be spread uniformly at a rate of three (3) cubic yards per thousand (1000) square feet (2.46 m³/100 sq. meter), and worked into the soil.

Apply superphosphate at a rate of ten (10) pounds per thousand (1000) square feet (48.8 kilograms per 1000 sq. meter).

Apply seed, at rate of four (4) pounds per thousand (1000) square feet (19.50 kilograms per 1000 sq. meter), using a drop (band) type spreader. Divide seed into two halves and distribute one half in the north-south direction, and the other half from east to west.

Rake seed into the soil and commence light watering, at least four times per day for two weeks, or until seed germinates as it becomes apparent and as weather and season permit.

Seeding: Broadcasting will be allowed in areas that cannot be drilled.

Prior to seeding, areas that have become muddy or hard shall be scarified to a depth of four (4) inches (100 mm), and left in a friable condition. Fertilize at a rate of forty (40) pounds (18.2 kilograms) of available nitrogen per acre.

Drilling: Drills shall be set for uniform rows with spacing not to exceed eight (8) inches (200 mm), and depth for the type of seed being drilled, for a distribution rate of twenty (20) pounds per acre (22.4 kilograms per hectare), or as recommended by the local Soil Conservation Service.

Dry mulching: Spread mulch uniformly over the seeded area at a rate of one and one-half (1½) tons per acre. Anchor mulch in the soils with a smooth or serrated coulter disc.

Hydraulic Methods: Use equipment designed for such work. Seed and water shall be uniformly applied to the areas scheduled to be seeded. Fertilizer, water and approximately one (1) ton per acre (2.24 megagrams per hectare) of hydraulic mulch shall be homogeneously mixed and uniformly applied to seeded areas.

PART 4 METHOD OF MEASUREMENT AND BASIS OF PAYMENT

METHOD OF MEASUREMENT

STANDARD ITEMS

SEEDING

This item will be measured by the number of square feet.

BASIS OF PAYMENT

STANDARD ITEMS

SEEDING

Payment shall include furnishing the seed, mulch and fertilizer; preparing the seedbed; drilling or broadcasting; and all labor, equipment, tools and incidentals necessary to complete the item.

SP-9 ADDITIONAL PAY ITEMS

1. and 32. MOBILIZATION

Payment will be made for mobilization to cover the cost of preparatory work and operations including but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the establishment of all offices, buildings, and other facilities necessary for the work on the project and for all other work and operations which must be performed, or costs incurred prior to beginning work on the various items on the project.

The OWNER will pay for mobilization as a percentage of the lump sum bid based on the percentage of the original Contract Price earned in accordance with the following formulas:

Percentage of Original Contract Amount Earned (PCE)	Percentage of Lump Sum Mobilization to be paid (PMP)
0-5	$(4) \times (PCE)$
5-10	$20 + (6) \times (PCE - 5)$
10-25	$50 + (2/3) \times (PCE - 10)$
25-65	$60 + (3/4) \times (PCE - 25)$
65-80	$90 + (2/3) \times (PCE - 65)$
80+	100

2. and 33. CONTRACT BOND

This item will be paid as a lump sum for the lesser of the amount bid or the cost of the bond based on invoices from the insuring firm indicating the actual initial cost of the bond. Payment for this item includes the costs associated with furnishing the bonds that are required by the General Conditions.

3. and 34. FORCE ACCOUNT

A Force Account amount has been set up and is to be used to pay for work done on approved Change Proposal Requests (CPR's). In the event the total cost of approved CPR's for a Schedule exceed the Force Account amount, a Change Order will be prepared to cover the additional amount of required Contract Price change. The CONTRACTOR will be paid for only that portion of each Force Account amount that is covered by approved CPR's.

4. and 35. CONSTRUCTION SIGNING AND TRAFFIC CONTROL

This item will be paid as a lump sum basis for all signing and flagging necessary to safely and efficiently control traffic in and around the work area. Payment will be based on a percentage equal to the percentage of the original Contract Price earned, excluding the amount paid for Materials Stored On Site.

5. and 36. REMOVE SANITARY SEWER MAIN

This item shall be measured by the lineal feet of existing sanitary sewer main removed along the centerline of pipe from start of removal to end of removal. Payment shall include the removal of the pipe; any additional trench excavation and backfill needed to remove the pipe; and the hauling and legal disposal of the existing pipe offsite.

6. and 37. REMOVE SANITARY SEWER MANHOLE

This item shall be measured by numerical count of sanitary sewer manholes removed. Payment shall include the removal of the manhole; any additional trench excavation and backfill needed to remove the manhole; and the hauling and legal disposal of the existing manhole offsite.

7. and 38. ABANDON SANITARY SEWER MANHOLE IN PLACE

This item shall be measured by numerical count of sanitary sewer manholes abandoned in place. Payment shall include the removal of the entire top section of the manhole including all adjusting rings, frame and cover; any additional trench excavation and backfill needed to remove the top section of manhole, the hauling and legal disposal of the entire top section of the existing manhole offsite, filling the existing manhole with flowable fill, and compaction to ground surface.

8. and 39. REMOVE AND REPLACE ASPHALT PAVEMENT

This item shall include payment for removal of existing asphalt required for the installation of the sewer line, 24" of subgrade preparation under all areas to be paved and the installation of 6" thick asphalt paving as described for each item below. Asphalt removal and replacement shall be to the limits identified on the plans.

Removal of existing asphalt shall include any required saw cutting to produce a neat line and the removing the existing asphalt by rotomilling, hauling and piling milled asphalt to a designated area in Westview Park by the Ball Fields. Anticipated asphalt thickness on Johnson, Sheridan and Railroad streets is 4" or less. Anticipated asphalt thickness on Converse Street is 6".

24" subgrade preparation shall include all labor, equipment, tools, and incidentals necessary to scarify; moisture condition the materials; remove, relay and spread materials if necessary; compact materials; trim and finish grade the subgrade; and any other incidentals necessary to complete this item.

This item shall include preparing and cleaning the existing surface; furnishing, hauling, laying and spreading the tack coat(s); furnishing and drying aggregates; heating, proportioning, mixing, and otherwise processing the aggregates and furnishing asphalt cement; hauling, laying, spreading, finishing and compacting the asphaltic concrete; complying with any option requirements shown on the Drawings; all royalties, costs, and expenses that are incidental to the use of any of the materials; and all labor, equipment, tools and incidentals necessary to complete this item.

9. and 40. REMOVE AND REPLACE 4" CONCRETE SIDEWALK

This item shall be measured by the square foot of existing sidewalk removed and replaced.

Payment for removal shall include any required saw cutting to produce a neat line and the removing, hauling and satisfactorily disposing of sidewalk.

Payment for replacement will be for all materials, including concrete, premolded mastic material for expansion joints, sealant for all mastic material, contraction joints; curing of concrete; excavation, placing and compaction of six inches (6") of subgrade preparation under the sidewalk and topsoil along the edges of the sidewalk; and all equipment, tools and labor for the performance of all work and incidentals necessary to complete the item.

10. and 41. REMOVE AND REPLACE CURB AND GUTTER

This item shall be measured by the lineal feet of curb and gutter removed and replaced along the flow line of the curb.

Payment for removal shall include any required saw cutting to produce a neat line and subsequent removal and satisfactory disposal of existing pavement and existing curb and gutter.

Payment for replacement will be for all materials, including concrete, premolded mastic material for expansion joints, sealant for all mastic material, contraction joints; curing of concrete; excavation, placing and compaction of twelve inches (12") of subgrade preparation under the curb and to a point twelve inches (12") behind the back of curb; placing topsoil behind the curb; and all equipment, tools and labor for the performance of all work and incidentals necessary to complete the item.

11. and 42. REPLACE GRAVEL ROAD SURFACE

This item shall be measured by the square yards of gravel road surface replaced. Replacement shall include all labor, equipment, tools, and materials required to replace, and compact gravel road surface. New grading "L" base shall be supplied by CONTRACTOR, and placed 6" thick, and compacted on all gravel road surfaces disturbed by the project. This item shall also include all other incidentals required to complete the work.

12. and 43. REMOVE AND REPLACE CHAINLINK FENCE

This item shall be measured by the lineal foot of permanent chainlink fence and gates removed and replaced as required for the installation sanitary sewer service connections or as directed by the ENGINEER. Payment shall include all materials, excavation, backfill, equipment, labor, tools, incidentals to remove and replace with new materials the existing fence and gates, and legal disposal of existing fence offsite to complete this item.

13. and 44. REMOVE AND REPLACE WOOD FENCE

This item shall be measured by the lineal foot of permanent wood fence and gates removed and replaced as required for the installation sanitary sewer service connections or as directed by the ENGINEER. Payment shall include all materials, excavation, backfill, equipment, labor, tools, incidentals to remove and replace with new materials the existing fence and gates, and legal disposal of existing fence.

14. and 45. REMOVE AND REPLACE SMOOTH WIRE FENCE

This item shall be measured by the lineal foot of permanent smooth wire fence and gates removed and replaced as required for the instillation sanitary sewer service connections or as directed by the ENGINEER. Payment shall include all materials, excavation, backfill, equipment, labor, tools, incidentals to remove and replace with new materials including fence and gates, and legal disposal of existing fence.

15. and 46. REMOVE AND REPLACE RAILROAD TIE RETAINING WALL

This item shall be measured by the lineal foot of permanent railroad retaining wall removed and replaced as required for the instillation sanitary sewer service connections or as directed by the ENGINEER. Payment shall include all materials, excavation, backfill, equipment, labor, tools, incidentals to remove the existing retaining wall and replace with new materials, and legal disposal of existing materials.

16. and 47. UTILITY LINE CROSSING

This item shall be paid as each utility line crossing encountered. This item will pay for crossings on mains and services. This shall include excavation, **PRODUCTION SLOWDOWN**, labor, any necessary relocation of utility line and all other incidentals required to complete the work. All cable television lines have been abandoned by the utility owner. Located television lines are shown on the plans. Utility crossings will not be paid for these lines.

17. and 48. INSTALL TYPE 2 PIPE BEDDING

This item shall be paid by the number of cubic yards (CY) of Type 2 Pipe Bedding placed and compacted. Payment shall include furnishing and installing the bedding; compacting the bedding; and all labor, equipment, tools and incidentals necessary to complete the item. This item will only be paid for in areas which it is needed as approved by ENGINEER.

18. and 49. INSTALL 8" SANITARY SEWER

This item shall be measured by the lineal foot of 8" Sanitary Sewer Main installed along centerline of the pipe through all fittings and appurtenances. Payment shall include furnishing and installing pipe; furnishing and placing Type 1 Pipe Bedding; all trench excavation and backfill; special requirements for connection to manholes; testing and all other work necessary or incidental for completion of the item.

19. and 50. INSTALL 8" SANITARY SEWER PIPE BURST

Payment shall include furnishing and installing all new sanitary sewer pipe, complete and accepted in place, all labor, equipment, materials, and ancillary items to complete the work including, but not limited to, pipe bedding, backfill materials, labor, equipment, cleaning of the main, cost of insertions and retrieval pits, machine pits, testing, video inspection of the main after bursting and the preparation of tapes and reports detailing the findings of these inspections, temporary diversion of effluents, communications with sewer users and the public and all other work necessary or incidental for the completion of the item.

20. and 51. INSTALL BASIC SANITARY MANHOLE (8' DEPTH)

Payment for manholes will be made at the Contract Unit Price Bid each for a typical depth of eight (8) feet. Payment shall include all excavation and backfill; furnishing and installation of the base, manhole sections, adjusting rings, reinforced lid, steps, cast iron ring and cover, joint sealer, and all other work or incidentals required to complete this item.

21. and 52. INSTALL ADDITIONAL SANITARY SEWER MANHOLE DEPTH

This item shall be measured by the additional vertical feet of manhole depth installed to the nearest tenth foot (0.1') and will be calculated by subtracting eight (8) feet from the total depth measured from the top of the cover to the lowest invert. Payment shall include manhole section, adjustment rings, all excavation and backfill, steps, joint sealer, and all other incidentals to complete the time.

22. and 53. CONNECT TO EXISTING SEWER MAIN

This item shall be measured by the numerical count of manhole connections to existing sanitary sewer mains. Payment shall include removal of existing concrete; installing the connecting sanitary sewer pipe; supplying and installing grout and rubber seal; excavation and backfill; and all other work necessary or incidental for completion of the item.

23. and 54. CONNECT TO EXISTING SEWER MANHOLE

This item shall be measured by the numerical count of sewer main connections to existing sanitary sewer manholes. Payment shall include removal of existing concrete; installing the connecting sanitary sewer pipe; supplying and installing grout and rubber seal; excavation and backfill; and all other work necessary or incidental for completion of the item.

24. and 55. RECONNECT EXISTING SANITARY SEWER SERVICE

This item shall be measured by numerical count of connections to existing sewer services. Payment shall include all materials, including the properly sized mechanical joint sleeve(s), equipment, tools, labor and other incidentals necessary to connect the new service line to the existing sanitary sewer service.

25. and 56. INSTALL 4" SANITARY SEWER SERVICE

This item shall be measured by the lineal foot of 4" sewer service installed. Payment shall include furnishing and installing the sanitary sewer service line, wyes, and locating tape from the main to the limits shown on the Drawings; furnishing and installing all required fittings and locating ball if required; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

26. and 57. INSTALL 6" SANITARY SEWER SERVICE

This item shall be measured by the lineal foot of 6" sewer service installed. Payment shall include furnishing and installing the sanitary sewer service line, wyes, and locating tape from the main to the limits shown on the Drawings; furnishing and installing all required fittings and locating ball if required; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

27. and 58. INSTALL 4" SANITARY SEWER SERVICE CLEANOUT

This item shall be measured by each 4" sanitary sewer service cleanout installed. Payment shall include excavation and backfill; furnishing and installing 4" cleanout pipe, fittings and screw plug and all labor, tools, and other necessary items required to complete the item of work; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

28. and 59. INSTALL 6" SANITARY SEWER SERVICE CLEANOUT

This item shall be measured by each 6" sanitary sewer service cleanout installed. Payment shall include excavation and backfill; furnishing and installing 6" cleanout pipe, fittings and screw plug and all labor, tools, and other necessary items required to complete the item of work; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

29. and 60. ABANDON EXISTING SANITARY SEWER SERVICE IN PLACE

This item shall be measured by each sanitary sewer service abandoned in place. Payment shall include excavation and backfill; furnishing and installing the appropriate cap fitting and all labor, tools, and other necessary items required to complete the item of work; all trench excavation, backfill, pipe bedding, shoring, and dewatering; cleanup and all other work necessary or incidental to complete the item.

30. and 61. REMOVE AND REPLACE TOPSOIL

This item shall be measured by square yard of 6" thick topsoil stripped, stockpiled and replaced in its original location or as directed by the ENGINEER. Payment shall include removal, loading, hauling and stockpiling of the topsoil; and for all tools, equipment, labor and incidentals necessary to complete this item of work.

31. and 62. SEEDING

This item will be measured by the number of square feet. Payment shall include furnishing the seed and fertilizer; preparing the seedbed; drilling or broadcasting; and all labor, equipment, tools and incidentals necessary to complete the item.



Matthew H. Mead
Governor

Wyoming Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

10 East Brundage Lane 307-674-2300
Sheridan, Wyoming 82801



John F. Cox
Director

RECEIVED SEP 09 2011



September 7, 2011

Re: License # 8210
Crook County

City of Moorcroft
Steve Blakeman, Mayor
104 N. Big Horn Ave
P.O. Box 70
Moorcroft, Wy 82721

Steve:

Your application for a license to construct a facility within the right-of-way of US 16 at Milepost 200.04 located in the city of Moorcroft in Crook County has been processed through the district office.

This license is contingent upon contact with the local Maintenance Area Supervisor (Mr. Barry Bowersox at the Gillette Shop telephone number(307-685-5941) and is not valid until the local Maintenance Area Supervisor gives authority to proceed with the work. Should the local Maintenance Area Supervisor not be contacted prior to work within the right-of-way, the license shall be revoked. Additional requirements have been added to the stipulation page that will need to be followed to complete this project.

You will be responsible to provide signing and traffic control according to the new MUTCD standards necessary for the safety of the traveling public while working within the highway right-of way.

You will be responsible for all notifications and requirements as for the "One-Call of Wyoming" program. All existing utilities have prior rights and protections on WyDOT right-of-ways.

Granting of this license does not imply any title interest in the land being vested by the Wyoming Department of Transportation, and the licensee assumes all responsibility for title clearance by virtue of occupying highway right-of-way.

Respectfully

Marty Bach
Mangt. Tech.

Maint.

MB

cc: Bill Carson, Project Manager, Stetson Engineering
Barry Bowersox, Maintenance Area Supervisor, Gillette
Curt Olson, Maintenance Staff, Cheyenne
File

TRANSPORTATION COMMISSION OF WYOMING and its WYOMING DEPARTMENT OF TRANSPORTATION

LICENSE

1. Parties. The parties to this License are The Town of Moorcroft, hereinafter referred to as Licensee, whose address is P.O. Box 70 Moorcroft, WY 82721 and the TRANSPORTATION COMMISSION OF WYOMING and its WYOMING DEPARTMENT OF TRANSPORTATION, whose address is 5300 Bishop Blvd, Cheyenne, WY 82009-3340, hereinafter referred to as Agency.

2. Purpose of License. The Licensee is planning the construction of a replacement of 8" sanitary sewer main.

hereinafter referred to as Facility, located in:

Section 6 Township 49 Range 67 Milepost 200

GPS Coordinates: Entering R/W: Longitude 44.2636 (Dec.deg.) Latitude 104.94948 (Dec.deg.)

Exiting R/W: Longitude 44.26343 (Dec.deg.) Latitude 104.94949 (Dec.deg.)

(GPS Datum NAD/83 accuracy to ±30')

Route HWY 16 County(ies) Crook Maintenance Section

ACCESS CONTROLLED: Yes No X

upon the property the Agency acquired for and/or utilized in the operation and maintenance of a state highway. (For encroachments, attach a separate sheet detailing each change in direction within the right-of-way with the above information.)

3. Term of License and Required Approvals. This License is effective when all parties have executed it and authority to proceed has been granted by the Agency.

4. Responsibilities of Licensee.

a. Condition of Approval. As a condition of approval for this license, the Licensee agrees to locate the Facility identified by this license at the Licensee's expense, in accordance with Wyoming Statute § 37-12-301 et. seq. Wyoming Underground Facilities Notification Act, to include the nature, location and depth of the Facility. The location and depth will be described on an engineering drawing, using three dimensional planes and a datum reference determined by the Agency. If unanticipated or unusual circumstances are encountered during Facility construction which force a deviation in excess of two feet from the approved horizontal alignment, the respective district maintenance engineer will be contacted prior to making the deviation, for approval of the deviation and an amended exhibit will be filed by the Licensee. See Plan/Staking Sheet.

b. Plan/Staking Sheet. The Licensee shall attach hereto a plan sheet and/or staking sheet showing the proposed facilities to be placed within the Agency's right-of-way. This plan sheet, shall be designated Exhibit "A" and made a part of this License. Upon completion of the proposed work, the Licensee shall submit to the Agency "As-Constructed" plans showing the actual location of the facilities within the Agency's right-of-way. Exhibit "A" and the "As-Constructed" plans shall comply with the Wyoming Department of Transportation Utility Accommodation Regulation and the following requirements:

PLAN VIEW REQUIREMENTS

- Existing roadway, right-of-way line, right-of-way fence, and cross fences if they are not on the right-of-way line.
Existing approaches, intersecting roads or streets, drainage ditches, irrigation ditches, pipes, and culverts that have to be crossed

- Existing major utility facilities.
- Proposed Facility alignment with offset distances from either the roadway centerline or right-of-way line.
- Location of existing facilities on the highway right-of-way that are owned and operated by the Company.
- Proposed locations of all support appurtenances such as air relief valves, manholes, pedestals, junction boxes, line marker, vent pipes, guys and anchors, etc.
- Size and/or capacity of the proposed Facility, that is, kV, number of cable pairs, pipe diameter, pipe type, wall thickness (for carrier and casing), product to be carried, max. operating psig, etc.
- Indicate with a highlighter, appropriate symbol, or verbiage (for example, "As-Constructed") the new Facility so that it is easily recognizable for someone reading the drawing(s).
- Legal description: Section, Township, and Range with North Arrow.
- Reference new Facility to the nearest milepost marker using a compass direction and footage. Example: "1231' east of milepost 30."
- All bridge attachments must be reviewed and approved by the WYDOT Bridge Program. Bridge attachments should indicate if the Facility is to be placed in an existing conduit or a new conduit on the bridge. Bridge attachments are addressed in the WYDOT Utility Accommodation Regulation.

AERIAL HIGHWAY CROSS SECTION

- Low sag design clearance above the high point of the roadway.
- Existing or proposed under-built facilities, including those by others.
- Cross section view of the highway right-of-way indicating the location of poles or support structures relative to the roadway centerline or right-of-way lines.

BURIED HIGHWAY CROSS SECTION

- Cross section view of the highway right-of-way at the crossing, showing the depth of the Facility relative to natural ground, roadway drainage ditch, and the roadway template.
- If casing pipe or conduit is used, indicate by dimension where the casing will end.
- If heavy wall thickness pipe is used instead of casing pipe, show where the heavy wall thickness pipe transitions back to normal thickness pipe.

The maximum sheet size shall be 11" x 17". Use of Agency supplied project plans and cross sections is recommended as most of the above requirements are met, saving time and expense to both parties. Contact the Agency for availability of paper plans and/or electronic design files.

- c. **Facility Placement.** The Facility will be placed in a manner conforming to recognized standards, applicable federal, state, or local laws, codes, ordinances, and regulations; in the exact location shown on the attached "Exhibit A"; and as directed by the Agency. Placing the Facility in a location other than originally approved without obtaining prior Agency approval by submitting a revised "Exhibit A", will void the license.
- d. **Changes.** Any future alterations, modifications, or removals of the Facility within the highway right-of-way, required and requested by the Agency, shall be completed without delay. Adjustments will be accomplished *at no expense to the Agency*, unless otherwise provided for by law. Any costs due to delays or lack of response to the Agency or an Agency contractor resulting from the failure of the Licensee to perform the required adjustments necessitated by a highway construction project or maintenance activities, will be borne by the Licensee.
- e. **Limitations.** This license will not be modified, transferred, or assigned without the written consent of the Agency. This license does not allow for installation of additional facilities, nor does this license set aside a strip of land of specific width for the exclusive use by the Licensee.
- f. **Cancellation/Nullification.** The Licensee is required to notify the Agency in writing to cancel and/or nullify any issued license if the described Facility is not constructed within the prescribed time limits, scheduled to be removed, or taken out of service. No Facility will be allowed to be abandoned in place. The Facility must be removed at the time of abandonment.
- g. **Facility Access.** The maintenance, use, inspection, and access to the Facility shall be accomplished from locations outside of the lines of no access or access control. Ingress or egress to and from the Facility from the traveled ways of an access controlled road is hereby expressly forbidden.

The Licensee hereby agrees to indemnify and hold harmless the Agency against all loss, liability, and damage that arises out of any activities of the Licensee, its agents, employees, and contractors in the performance of any construction, maintenance, repair, or other work on the Agency's property.

Allegations or proof of negligence or other legal fault on the part of the Agency will not defeat the Agency's rights under this provision or relieve the Licensee, its contractors, and agents of their duty to indemnify and hold harmless the Agency, but the Agency will be responsible for any percentage of fault that may be attributable to it pursuant to law, and the obligation of the Licensee, its contractors and agents to indemnify and hold harmless the Agency will be reduced by the percentage of fault attributable to the Agency.

- i. **Inspectors.** Based upon the complexity, construction methods or other concerns, the Agency may assign part-time or full-time inspector(s) to the Licensee's project. The cost of such inspection will be at the sole expense of the Licensee, and the Agency's District Offices will initiate an *Authority for Rendering Special Services (ARS)*, as provided in *Operating Policy 24-3*, to cover such costs.
- j. **Notices.** All notices arising out of, or from, the provisions of this License shall be in writing and given to the parties at the address provided under this License, either by regular mail, facsimile, or delivery in person.
- k. **Proof of Insurance.** The Licensee shall not commence work on this License until the Licensee has obtained all insurance required, provided a copy of all policies to the Agency, and such insurance has been approved by the Agency. Approval of the insurance shall not relieve or decrease the liability of the Licensee. The Licensee's insurance certificates shall be furnished or countersigned by a resident agent authorized to do business in the State of Wyoming.
- l. **Sovereign Immunity.**

For private (non governmental) entities (which include utility companies, railroads):

The State of Wyoming and Agency do not waive sovereign immunity by entering into this Agreement, except to the extent necessary for the Parties to pursue an agreement action to clarify or enforce the written terms of this Agreement. In all other situations, the State of Wyoming and the Agency specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute § 1-39-104(a), and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity.

For other governmental entities (municipality, county, board, commission, another state, water districts, sewer districts and other "instrumentalities" of local governments):

The State of Wyoming and Agency do not waive sovereign immunity by entering into this Agreement and the Licensee does not waive governmental immunity, except to the extent necessary for the Parties to pursue an agreement action to clarify or enforce the written terms of this Agreement. In all other situations, the State of Wyoming and the Agency specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute § 1-39-104(a), and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity.
- m. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this License shall not be construed so as to create such status. The rights, duties and obligations contained in this License shall operate only between the parties to this License, and shall inure solely to the benefit of the parties to this License. The provisions of this License are intended only to assist the parties in determining and performing their obligations under this License.
- n. **Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this License.
- o. **Waiver.** The waiver of any breach of any term or condition in this License shall not be deemed a waiver of any prior or subsequent breach.

p. **Work in Vicinity of Other Utilities.** The Licensee is hereby advised that any work operation in the vicinity of electric power lines shall be in compliance with Wyoming Statute § 37-3-301 *et seq.*, *Wyoming High Voltage Power Lines and Safety Restrictions Act*, and the Licensee is further advised to comply with the provisions of Wyoming Statute § 37-12-301 *et seq.*, *Damage to Underground Public Utilities Facilities*.

7. **Signatures.** In witness thereof, the parties to this License, either personally or through their duly authorized representatives, have executed this License on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this License.

The effective date of this License is the date of the signature last affixed to this page.

LICENSEE

Steve Blakeman, Mayor

Printed Name and Title



Signature

05/18/2011


Date

(307) 756 - 3526 (307) 756 - 3323 townm@rtconnect.net
Phone Number Fax Number E-mail

AGENCY

LAWRENCE KONETZKI, DME

District Representative Printed Name and Title



Signature

9.7.11

Date

The following stipulations which have been checked are applicable to the attached license:

- The maintenance foreman at GILLETTE shall be notified before any work is begun and after work is completed.
- All disturbed areas are to be returned to their original condition. All surface debris, boulders, etc., as a result of construction activity are to be removed from the right-of-way.
- The licensee shall be responsible for any damage to the highway and its appurtenances as a result of this installation at any time such damage occurs.
- The minimum depth of placement is to be 48 inches below the bottom of ditch.
- All pedestals, vents, etc., are to be installed at the right-of-way line, or as agreed and/or approved.
- Subsequent leakage of any ditches breached by this installation which results in damage to the roadway and/or appurtenances or results in drainage problems on the right-of-way, are the responsibility of the licensee, and will be promptly repaired upon notification by WYDOT.
- Crossing of the roadway is to be made by jacking, dry boring or mining 30 FEET from the roadway edge.
- Crossing of all paved approaches encountered along the route of the installation shall be BORED.
- All gas pipeline facilities within the highway right-of-way shall be designed for Class 3 locations per 49 CFR: TRANSPORTATION, Section 1.48 (b) Delegation to Federal Highway Administrator, Part 192, HAZARDOUS MATERIAL REGULATION BOARD, "Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards."
- Casing type and method of installation shall be reviewed by the D.M.E. in SHERIDAN prior to installation and shall be capable of withstanding the traffic and roadbed loads. The casing or conduit shall be installed in a manner to prevent the formation of a waterway under the highway, and if used, shall run right-of-way to right-of-way, or as determined by the WYDOT district office based on field conditions.
- Where casing ends are below ground they should be suitably installed to protect the entrance of foreign matter which would prevent removal of the carrier.
- An open trench method of installation is approved.
- The trench is to be backfilled and compacted daily, no open trenching is to be left overnight.
- The backfill is to be compacted to 95 percent density as shown on the enclosed diagram and resurfaced as indicated. Temporary surfacing may be installed as needed but must be brought up to standard upon completion of the work.
- Gravel surfaces in paved travel lanes must be surfaced within three days.
- All anchors and pole locations must be installed outside the highway right-of-way.
- The minimum clearance for any conductor or cable within state and federal highway rights-of-way shall be 25'-6" computed at maximum conductor or cable sag.
- A letter specifying the name and location of an individual who will be representing the licensee on the job and is capable of instituting immediate changes in traffic control or work operation to bring them into compliance with the terms of the license.
- No materials or equipment will be stockpiled or parked (within the R/W) (within 30' of the traveled way).
- No work will be conducted from the roadway surface.
- A preconstruction conference will be scheduled with prior to commencing work.

- The electrical lines must be marked as indicated on the attached sheet.
- The company will enter into agreement with WYDOT and pay for inspection by WYDOT during construction.
- The company will bore under all paved side roads and approaches affected by the work on WYDOT property.
- All Contractors will have insurance in place as noted in attachment M-54C.
- All cable installed on Interstate right-of-way will be installed within 5'-0" of the right-of-way fence. Any deviation from this requirement will be approved by WYDOT's inspector.
- Installation will be limited to the cable and related facilities noted in the application. Installation of additional cable in the empty ducts being installed at this time will require notification to WYDOT and a separate permit describing the additional cable.
- All personnel working within state highway right-of-ways will wear high-visibility safety apparel meeting Performance Class 2 specifications of the current ANSI/ISEA 107 standard.**
- The abandoned manhole collar be removed to at least 16" below the asphalt level and that it be filled with flowable fill. Base installed and compacted to the bottom of the existing paving and paving installed to the same thickness as present mat. If man hole is removed entirely then it will need to be compacted in 6" lifts to the bottom of the paving level and then paved.

STANDARD DRAWINGS

STANDARD DRAWINGS

The Standard Drawings of the Contract Documents are included in the 2001 Edition of the Wyoming Public Works Standard Specifications, and are hereby incorporated by reference. Changes, amendments, and supplements, if any, to the Standard Drawings are shown in the drawings.