

City of Central City
REQUEST FOR PROPOSALS

FOR: City of Central City

DATE:9/6/16

Bid Package 001

RFP NO.: 2016WD-01

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Attachments to RFP:

- Exhibit 1: Summary of Work
- Exhibit 2: Measurement and Payment
- Exhibit 3: Bid form (to be returned with bid)

I. INTRODUCTION/INVITATION: The City of Central (Owner, City) is requesting bids from qualified firms for work on the Chase Gulch Dam and Reservoir Toe Drain Repair (the “Work”). The Work is described in additional detail in the “Summary of Work” and “Measurement and Payment” for Project No. 2016WD-01, a copy of each is attached to this RFP and is incorporated by reference. Bids shall include:

- 1) a breakdown of unit prices and quantities for anticipated labor, materials and equipment rates and;
- 2) a project total price; and
- 3) a proposed schedule for completing the work.

All work shall be performed in accordance with federal, state and local rules and regulations.

All work completed on the project will be performed in compliance with all applicable local, state, and federal regulations,

The City intends and expects that all bidders provide equal opportunity with no regard to gender, race, ethnicity, religion, age, or disability, and shall not discriminate on any of the foregoing grounds in the performance of the contract. All bidders shall make available equal opportunities to the extent third parties are engaged to provide goods and services and/or in the performance of the contract as subcontractors, vendors, or otherwise. Women and minority owned businesses are encouraged to respond to this RFP as primary bidders, subcontractors, or otherwise for the work.

Specifications and a sample contract is attached to this RFP.

Deere & Ault Consultants is acting as the Engineer of Record (Engineer) for the project. Deere & Ault Consultants address is 600 S. Airport Road, BLDG A, STE 205, Longmont, CO 80503; e-mail: glen.church@deereault.com. The Owner’s Representative is Jason Nelson; e-mail: jnelson@cityofcentral.co.

Interested parties are invited to submit a sealed Bid to the Owner, whose address is 141 Nevada St., Central City, CO 80452, **no later than September 20, 2016 at 17.00 MDT**. Emailed copies of each Bid are required, but are limited to a maximum of 10MB capacity. Electronic submittals must be received in the e-mail listed below. Submittals sent to any other email will NOT be forwarded or accepted. Please use the Delivery Receipt option to verify receipt of your email.

Email: *cityclerk@cityofcentral.co*; reference Central City RFP 2016WD-01 in the subject line.

All RFPs must be received and time and date recorded by authorized City staff by the above due date and time. Sole responsibility rests with the Proposer to see that their RFP

Request for Proposals (Continued)

response is received on time. Any responses received after due date and time will be returned to the Proposer.

Americans with Disabilities Act (ADA): If you need special services provided for under the Americans with Disabilities Act, contact the City of Central at (303) 582-5251 at least 48 hours before the scheduled event.

Please direct all questions concerning this RFP in writing to the City via e-mail. No questions will be answered verbally; all questions must be in e-mail. All questions and answers will be circulated as an RFP Addendum via e-mail. Questions will not be accepted after *Thursday, September 15, 2016 at 17.00 MDT.*

There will be a mandatory Pre-Bid Meeting onsite on Tuesday September 13, 2016 at 11:00 a.m. MDT.

Interested parties will meet at City Hall. The project locations will be visited. The pre-Bid meeting will be the last time at which the City will answer questions or provide clarifications regarding the Work.

PROJECT SCOPE/PERFORMANCE STANDARDS: All necessary labor, supervision, equipment, tools and materials for the Chase Gulch Dam & Reservoir Toe Drain Repair.

SCHEDULE: A non-binding notice of intent to accept Proposal is expected to be issued on or about September 23, 2016. Work is required to start on or about September 28, 2016 subject to further refinement in the Contract Documents. Contractor shall reach Substantial Completion within 24 calendar days after date of Notice to Proceed. Contractor shall complete work and reach Final Completion within 7 calendar days after date of Substantial Completion.

II. SUBMITTAL REQUIREMENTS: The following items are to be included in the Proposal:

- (a) Contact information, including an official e-mail address to receive notifications and updates.
- (b) Completed *Bid Form*.
- (c) Information on the relevant experience of key personnel.
- (d) Submit three (3) references for similar projects your company has completed within the last three years and relevant contact information.
- (e) Proposed Construction Schedule.
- (f) Significant subcontractors and suppliers over \$50,000. Provide name, service provided, and contract amount.

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(g) Comments to the proposed Contract Documents. Post-award comments to the Contract Documents not included in the Proposal shall not be considered.

(h) Short description of company's practical knowledge and financial resources to complete the Work. Name and qualifications of proposed Project Superintendent or Project Manager.

LEGAL REQUIREMENTS: The successful Bidder will be required to furnish, as part of the Contract Documents, insurance certificates in the amount specified in the Contract Documents, a Performance, Payment, Maintenance and Warranty Bond in an amount equal to one-hundred percent (100%) of the contract price, said bond to be issued by a responsible corporate surety approved by the City and shall guarantee the faithful performance of the Contract and the terms and conditions therein contained and shall guarantee the prompt payment of all materials and labor and protect and save harmless the City from claims and damages of any kind caused by the operations of the Contractor.

Bidders will be required to submit evidence that they have a practical knowledge of and the financial resources to complete the Work. Bidder shall submit the name and qualifications, including resume, for the proposed Project Superintendent. Evidence of financial stability must be provided upon request.

CRITERIA FOR EVALUATING PROPOSALS: Proposals will be evaluated based on:

- (a) Proposed schedule.
- (b) Comments to any Contract Documents
- (c) Responsiveness to this RFP.
- (d) Any other criteria deemed material by the City.

PROCEDURE FOR MAKING AWARDS: The Proposals are expected to be evaluated by the Engineer, and City staff, who will make a recommendation to City Council for award of contract.

The City of Central reserves the right to reject any or all qualifications and to waive informalities and minor irregularities in proposals received, and to accept any portion of or all items proposed if deemed in the best interest of the City to do so.

Bid documents and specifications may be obtained via the City website at www.centralcitycolorado.us or by contacting the City at 303-582-5251.

III. TERMS AND CONDITIONS:

1. Each Proposer shall furnish the information required in this RFP.

Request for Proposals (Continued)

2. The Contract will be awarded to the responsible Proposer whose submittal, conforming to the requirements of this RFP, is deemed most advantageous to the City of Central, price and other factors considered.
3. The City of Central reserves the right to reject any and all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the City, is in the best interest of the City of Central.
4. Late or unsigned responses to this RFP will not be accepted or considered.
5. Any interpretation, correction or change to this RFP will be made by written Addendum. Interpretations, corrections or changes to the RFP documents made in any other manner will not be binding, and the Proposer shall not rely on any such interpretations, corrections or changes.
6. Each Bid shall be made on the bid form provided in this RFP and no Proposer may withdraw his bid for a period of forty-five (45) days from and after the date set for opening of bids. Each Bid must be accompanied, in a sealed envelope, separate from the one containing the Bid, by a Bid Bond on an approved form in an amount equal to five percent (5%) of the Bid price, made payable to the City of Central, which shall be considered as liquidated damages and shall be forfeited to the City if said Bid is accepted and the Proposer fails to execute the Contract and Addendum within ten (10) calendar days after the Notice of Award by the City.
7. Confidential / Proprietary Information: RFPs submitted in response to this RFP and any resulting contract are subject to the provisions of the Colorado Open Records Act, C.R.S. §§ 24-72-201 et seq., as amended. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract shall be clearly stated in Proposer's response to the RFP. Confidential / proprietary information must be clearly identified, marked, and separated from the rest of the proposal. Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposed pricing or unit pricing will be considered confidential or proprietary. Any information that will be included in any resulting contract with the City cannot be considered confidential.

**IV. SIGNATURE PAGE (RFP 2016WD-01)
CHASE GULCH DAM & RESERVOIR TOE DRAIN REPAIR**

Failure to complete, sign and return this signature page with your proposal may be cause for rejection.

Contact Information	Response
Company Name	
Name and Title of Primary Contact Person	
Company Address	
Phone Number	
Email Address	
Company Website	

By signing below I certify that:

I am authorized to bid on my company's behalf.

I am not currently an employee of Central City.

None of my employees or agents is currently an employee of Central City.

I am not related to any Central City employee or member of City Council.

**Signature of Person Authorized to Bid on
Company's Behalf**

Date

Note: If you cannot certify the above statements, please explain the reason(s) why on at attached sheet and include a copy of the explanation sheet with your bid materials.

V. BID BOND (Complete and submit with your bid)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto the City of Central, Colorado, as Owner, in the penal sum of _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

THE CONDITION of this obligation is such that whereas the Principal has submitted to the City of Central, Colorado, the accompanying bid (the "Bid"), which is hereby made a part hereof, to enter into a contract for the Chase Gulch Dam & Reservoir Toe Drain Repair in RFP 2016WD-01.

AND WHEREAS, the Owner, as a condition for receiving said Bid, requires the Principal to deposit with the Owner a Bid Security equivalent to not less than five percent (5%) of the amount of said Bid,

NOW, THEREFORE,

- (a) If said Bid shall be rejected; or in the alternative,
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract (properly completed in accordance with said Bid) and shall furnish a Performance, Payment, Maintenance and Warranty Bond upon the forms prescribed by the Owner for the faithful performance of said contract; and for the payment of all persons performing labor or furnishing materials in connection therewith; and shall in all other respects perform the agreement created by the acceptance of said Bid; or in the alternative,
- (c) If the Principal shall pay to the City, as liquidated damages, and not as a penalty, to compensate the City for actual costs and delay the difference in amount between the Principal's Bid and that of the next lowest acceptable Bidder, then this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bids; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, this _____ day of _____, 20__, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth above.

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PRINCIPAL

SURETY

Name: _____

Address: _____

By: _____

Title: _____

Attorney in Fact

Give local address and
phone number if different
than above:

(Seal)

(Seal)

NOTE: Surety companies executing bonds must be authorized to transact business in the State of Colorado and be acceptable to the City of Central.

INSTRUCTIONS

1. The full firm name and residence of each individual party to the bond must be inserted in the first paragraph.
2. If the principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are partners composing the partnership (to be named), and all partners must execute the bond as individuals.
3. The state of incorporation of each corporate party to the bond must be inserted in the first paragraph and the bond must be executed under the corporate seal of said party attested by its secretary or other authorized officer.
4. Power of attorney must accompany this bond when signed by other than an officer of either the principal or surety.

VI. STANDARD FORM OF CONSTRUCTION CONTRACT

CENTRAL CITY CONSTRUCTION CONTRACT

THIS CONTRACT ("Contract") is entered into between the City of Central, a home rule municipality of the State of Colorado ("City") and (name of company) ("Contractor").

In consideration of the rights and obligations specified below, the City and the Contractor agree as follows:

1. Incorporation into Contract: *The Request for Proposals for City Project 2016WD-01*, together with any alterations and/or modifications to the RFP (the "Bid Documents"), are expressly incorporated into this Contract by this reference.

2. Work to be Performed: The Contractor will, in a good and workmanlike manner and at its own cost and expense, furnish all labor and equipment and do all work necessary and incidental to performing (specify type of work) as specified in the Bid Documents and this Contract (the "Work"). The Contractor shall perform the Work in strict accordance with the Bid Documents and this Contract. The Contractor shall complete the Work in accordance with the City's Standards and Specifications for Design and Construction dated April 1, 2013 ("City Standards"), and shall adhere to all applicable City Standards in completing the Work.

3. Term of Contract: This Contract shall begin and become effective on the date of execution by the parties, which date is the date specified on the signature page of this Contract. Under this Contract, the Contractor shall begin Work on (date) and shall continue through (date).

4. Payment for Work Performed: In consideration of the Work to be performed by the Contractor, and subject to paragraph 14, the City shall pay to the Contractor, in accordance with the Bid Documents, the not to exceed sum of _____ dollars (\$_____) (the "Contract Price").

5. Extension and/or Renewal of Contract Term:

a. The City, in its sole discretion, may elect to extend the term of this Contract. In the event the City elects to exercise this right, it shall send written notice to Contractor, pursuant to paragraph 15, of its intent to extend the term of the Contract. The notice shall set forth the length of the extension.

b. All of the provisions of this Contract shall remain in full force and effect during any extension or renewed term except that the scope of services and compensation to be paid to Contractor during any extension or renewed term shall be mutually agreed upon prior to the commencement of any extension or renewed term. The agreed upon scope of services and compensation shall be reduced to writing, signed by both parties, and attached to this Contract.

c. TEN CALENDAR DAYS BEFORE THE COMMENCEMENT OF ANY EXTENDED TERM THE CONTRACTOR SHALL SUBMIT TO THE CITY PROOF OF INSURANCE AS REQUIRED IN PARAGRAPH 9.

d. Should the parties fail to agree upon the scope of services or compensation to be paid to Contractor for any extension or renewed term, or should Contractor fail to submit the required documents within the time period specified in paragraph 5(d), then this Contract shall terminate at the end of the then current term and no extension or renewal of the term of the Contract shall occur.

6. Quality of Performance: The Contractor shall perform the Contract in a manner satisfactory and acceptable to the City. The City shall be the sole judge of the quality of performance.

7. Schedule of Work: The Contractor shall perform the Work during the hours designated by the City so as to avoid inconvenience to the City and its personnel and interference with the City's operations.

8. Indemnity: The Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform the Work under this Contract. The Contractor will indemnify and hold harmless the City, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control.

9. Insurance Requirements: The Contractor shall procure and maintain at its own expense, and without cost to the City, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

a. Commercial General Liability.

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$500,000 Each Occurrence, \$1,000,000 General Aggregate and

\$1,000,000 Products Completed Operations Aggregate. Umbrella/Excess coverage to be provided of up to \$1,000,000 Per Occurrence over these underlying limits Following Form and GL and AL.

b. Automobile Liability.

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

c. Workers' Compensation and Employer's Liability.

Workers' Compensation must be maintained within applicable statutory limits.

The Contractor shall provide a Certificate of Insurance to Central City demonstrating that the insurance requirements have been met prior to the commencement of Work under this Contract. Central City shall be named as an additional insured for the Commercial General Liability and Automobile Liability policies.

10. Nondiscrimination: The Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, state and federal laws respecting discrimination and unfair employment practices.

11. Nondiscrimination Provisions Binding on Subcontractors: In all solicitations by the Contractor for any Work related to this Contract to be performed under a subcontract, either by competitive bidding or negotiation, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

12. Information and Reports: The Contractor will provide to authorized governmental representatives, including those of the City, State and Federal Government, all information and reports which they may require for any purpose authorized by law. The Contractor will permit such authorized governmental representatives access to the Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where any information required by any such authorized government representative is in the exclusive possession of a person other than the Contractor, then such Contractor shall so certify to the City, and shall explain what efforts it has made to obtain the information.

13. Independent Contractor: The Parties recognize and agree that the Contractor is an independent contractor for all purposes, both legal and practical, in performing services under this Contract, and that the Contractor and its agents and employees are not agents or employees of Central City for any purpose. As an independent contractor, the Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform the services purchased under this Contract, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions. Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from Central City, its elected officials, agents, or any program administered or funded by Central City. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this Contract.

14. Termination and Related Remedies:

a. The other provisions of this Contract notwithstanding, financial obligations of Central City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Central City is prohibited by law from making financial commitments beyond the term of its current fiscal year. The City has contracted for goods and/or services under this Contract and has reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of the City as the funding entity, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, the City shall have the right to terminate this Contract by providing seven (7) days written notice to the Contractor pursuant to paragraph 15, and will be released from any and all obligations hereunder. If the City terminates the Contract for this reason, the City and the Contractor shall be released from all obligations to perform Work and make payments hereunder, except that the City shall be required to make payment for Work which has been performed by the Contractor prior to the effective date of termination under this provision; and, conversely, the Contractor shall be required to complete any Work for which the City has made payment prior to providing written notice to the Contractor of the termination.

b. The preceding provisions notwithstanding, the City may terminate this Contract, either in whole or in part, for any reason, whenever the City determines that such termination is in the City's best interests. Such termination shall be effective after the City provides seven (7) days written notice to the Contractor pursuant to paragraph 15.

c. In the event the City exercises either of the termination rights specified in paragraphs 14(a) or 14(b), this Contract shall cease to be of any further force and effect, with the exception of all Contract remedies which are specified herein and may otherwise be available to the parties under the law, and with the exception of any rights or liabilities of the parties which may survive by virtue of this Contract.

15. Notices: For purposes of the notices required to be provided under this Contract, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, or hand-delivered to the following representatives of the parties at the following addresses:

For the City:

Central City
PO Box 249
141 Nevada Street
Central City, CO 80427

For the Contractor:

With copy to:

City Attorney
c/o Michow, Cox & McAskin, LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, CO 80111

16. Prohibitions on Public Contract for Services:

Pursuant to Colorado Revised Statutes (C.R.S.), § 8-17.5-101, et seq., as amended, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

a. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.

b. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

c. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

d. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

e. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

f. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and, terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides

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information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

g. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

h. If Contractor violates any provisions of this Section of this Agreement, the City may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City.

17. Amendments: This Contract may be altered, amended or repealed only on the mutual agreement of the City and the Contractor by a duly executed written instrument.

18. Assignment: This Contract shall not be assigned or subcontracted by the Contractor without the prior written consent of the City.

19. Benefit to Successors and Assigns: This Contract shall be binding upon the successors and assigns of the parties.

20. Governing Law and Venue: The laws of the State of Colorado shall govern the interpretation and enforcement of this Contract. Any litigation that may arise between the parties involving the interpretation or enforcement of the terms of this Contract shall be initiated and pursued by the parties in the Gilpin County District Court.

21. Breach: Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

22. Termination of Prior Agreements: This Contract cancels and terminates, as of its effective date, all prior agreements between the parties relating to the services covered by this Contract, whether written or oral or partly written and partly oral.

23. Severability: If any provision of this Contract is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

24. Third Party Beneficiary: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the City and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

Request for Proposals (Continued)

25. Governmental Immunity: Nothing in this agreement shall be construed in any way to be a waiver of the City's immunity protection under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., as amended.

26. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the Parties to this Agreement: (1) Electronic or facsimile delivery of a fully executed copy of a signature page; (2) The image of the signature of an authorized signer inserted onto PDF format documents. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 to 121.

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Central and the Contractor and bind their respective entities.

CITY OF CENTRAL, COLORADO

By: _____
Ron Engels, Mayor

ATTEST:

REVIEWED BY:

City Clerk

Marcus McAskin, City Attorney

CONTRACTOR

[COMPANY NAME]

By: _____

Name: _____

Title: _____

Request for Proposals (Continued)

ATTEST:

By: _____
Name

(If this Contract is executed on behalf of a corporation, it must be signed by an agent duly authorized by the corporation to execute such Contract, and if specified by the corporate by-laws, the corporate seal must be affixed to the Agreement by the Secretary of the corporation or other authorized keeper of the corporate seal.)

VII. CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statutes, § 8-17.5-101, et seq., as amended, as a prerequisite to entering into a contract for services with Central City, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name

Date

Name (Print or Type)

Signature

Title

Note: Registration for the E-Verify Program can be completed at: <https://e-verify.uscis.gov/enroll/>

VIII. FORM OF PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND (to be completed post-award)

PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, as Principal, herein called Contractor, and _____, as surety, herein called Surety, are hereby held and firmly bound to the City of Central, Colorado, as Obligee, herein called Owner or City, in the sum of _____ Dollars (\$_____), for the payment of which the Contractor and Surety bind themselves as well as their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor and Owner have entered into a written construction contract dated the ___ day of _____ 2016 (the "Contract"), for the construction and completion of the Chase Gulch Dam & Reservoir Toe Drain Repair as specifically referenced in the Contract and in (Central City RFP 2016WD-01), which Contract and RFP are by reference made a part hereof.

WHEREAS, Contractor and Surety are jointly and severally liable under the provisions of this bond and action against either or both may proceed without prior action against the other, and both may be joined in one action.

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The Contractor shall: (1) faithfully perform all requirements and obligations of the Contract, specifically including all extended warranty or guarantee provisions, and other applicable law, and satisfy all claims and demands incurred for the same; (ii) fully indemnify and hold harmless the City from all costs and damages which the City may incur in making good any default of the Contractor under the Contract.

SECOND. The Contractor shall protect, defend, indemnify and save harmless the City and its officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including, in part, the loss of use, resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor, or its employees, servants, agents, subcontractors or suppliers, or anyone else under the Contractor's direction and control (regardless of whether or not cause in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Contract (the "Work"), or from conditions created by the performance or non-performance of the Work.

Whenever Contractor shall be, and is declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and

Request for Proposals (Continued)

conditions, and upon determination by Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make available as work progresses (even though there should be a default or a default or a succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph of this bond. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by the City to Contractor under the Contract and any amendments thereto, less the amount properly paid by the City to Contractor; or

3. Complete or cause to be completed any repairs or other work required to be completed under the applicable two (2) year warranty period.

THIRD. The Contractor shall pay all persons, firms and corporations, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment used or rented in the performance of the Work described in the Contract subject, however, to the following conditions.

1. A claimant is defined as one having a direct Contract with the Contractor, or with a Subcontractor of the Contractor for labor material or both, used or reasonably required for use in performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Contractor and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's Work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due the claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than one having a direct Contract with the Contractor, shall have given written notice to any two of the following: The Contractor, the City, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the Work or labor was done or performed. Such notice shall be served by mailing same by registered mail or certified, postage prepaid, in an envelope addressed to the Contractor, City, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
 - b. After expiration of six (6) months following the date on which Contractor ceased Work on said Contract, it being understood, however, that if any limitation embodied in this

Request for Proposals (Continued)

bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

- c. Unless claimant brings such action in a state court of competent jurisdiction in and for Gilpin County, Colorado, or such other county in which the Work (as described in the Contract) is to be completed, and not elsewhere.

FOURTH. The Contractor and Surety shall guarantee and warrant that all Work shall remain in good order and repair for a period of **one (1) year** from date of final acceptance from all causes arising from defective workmanship and materials, and shall make all repairs arising from said causes during such period without further compensation, and shall further guarantee that all areas within the public rights-of-way affected by the Work shall remain in good order and repair without further compensation from the City for a period of **one (1) year** from and after final acceptance of the Work by the City. The determination of the necessity for the repair or replacement of any Work or areas within public rights-of-way shall rest entirely with the City, and the City's decision upon the matter shall be final and obligatory upon the Contractor, subject to judicial review pursuant to applicable law.

Nothing in this bond shall be interpreted to alter the controlling provisions of 23 C.F.R. 635.413 related to guaranty and warranty clauses on federal aid projects. The warranty provisions will only be applicable to the specific construction product(s) or feature(s) identified with particularity in the Contract Documents. The warranty shall not apply to routine maintenance items (which are not eligible for federal participation).

The Surety hereby waives the right to special notification of any alterations, omissions or reductions, extra or additional work, extensions of time, Change Orders, Field Orders, or any other act or acts of the City or its authorized agents under the terms of the Contract; and failure to notify Surety of such shall in no way relieve Surety of its obligations under this bond.

Further, the Surety shall pay to the City all costs and attorney fees necessary to enforce the provisions of the bond provisions contained herein.

Unless prohibited by law, an action on this bond may be brought by the City or any person entitled to the benefits of this bond at any time within three (3) years from the date on which final payment under the Contract falls due.

Upon full compliance with all the obligations of the Contract, the City shall release this bond, in writing. This bond shall remain in effect until released by the City or the City consents in writing to acceptance of a substitute bond.

SIGNED AND SEALED THIS ____ day of _____, 20____.

(signature page follows)

Request for Proposals (Continued)

PRINCIPAL (CONTRACTOR)

SURETY

(Name of Company)

(Name of Company)

By: _____

By: _____

Address:

Address:

NOTE: Surety companies executing bonds must be authorized to transact business in the State of Colorado and be acceptable to the City of Central.

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute the bond, certified to include the date of the bond.)

EXHIBIT #1

SUMMARY OF WORK

Furnish all equipment, labor, and materials for construction to complete the Chase Gulch Dam & Reservoir Toe Drain Repair, as detailed in the Construction Documents. The work includes, but is not limited to, the following work items:

Chase Gulch Dam & Reservoir Toe Drain Repair

The original Chase Gulch Dam & Reservoir 6-inch ADS toe drain has had a reduction in drain flows and the water table height within the concrete faced rockfill dam has increased in height the past 10 years. The reduce flow and higher water table indicate that the existing toe drain pipe is clogged or crushed. Water is seeping from the dirty rockfill buttress due to the high water table inside the dam embankment. The seeping water is becoming a nuisance for traffic in the valley bottom because of muddy conditions. A new toe drain will help lower the ground water table within the dam embankment. The project is under the State Engineers Office of Dam Safety Jurisdiction. The project includes:

- Mobilization to and demobilization from the site of all equipment, personnel, and materials required to complete the work.
- Site dewatering to perform all construction in relatively dry conditions. The dam embankment has a ground water table within the embankment that needs to be dewatered in a controlled manner prior to excavation of the toe drain pipe trench.
- Excavation of the spillway drain trench and toe drain trench. Equipment and machinery that is capable of handling large boulders shall be used to excavate the trenches. Boulders in the dirty rockfill may range in size from 12-inch to 42-inch diameter. Stockpiling of the excavated soils for use as backfill for the trench.
- Hiring of a qualified quality control testing firm for field and laboratory testing for soil, concrete, etc.
- Installation of toe drain and spillway drain pipes and associated fittings including placement and compaction of #67 rock filter around drain pipes,
- Cleanout construction including placement of concrete collar, installation of steel casing, backfilling and compaction around cleanout pipe, and installation of lockable cap.
- Installation of 60-inch diameter manhole including connection of drain pipes to the manhole, sealing of the manhole joints, subgrade preparation, placement and compaction of #67 rock around manhole, placement of cast in place concrete invert.
- Construction of spillway drain and toe drain concrete headwalls including, forming, reinforcement steel installation, subgrade preparation, pipe penetration, concrete placement, concrete washout, curing and blanketing, backfilling and compaction.
- Erosion control and BMPs for the project. Follow state and local regulation and practices for erosion control.
- Purchase and delivery of a portable toe drain weir to the site. Calibration of the portable toe drain weir using 5-gallon bucket and stop watch.
- Videotaping of the toe drain and the spillway drain pipes after construction and backfilling is completed. Provide 4 sets of DVDs of the toe drain pipe and spillway drain pipe to the owner.
- Construction of chimney drains on the spillway drain pipe and toe drain pipe including placement and

compaction of #67 rock and spreading excess soils.

- Removal and replacement, if needed, of existing electrical conduit. One pump well may be in conflict with the new toe drain pipe trench and may need to be removed if necessary. Protection of the OBS-2 observation well. Protection of pump well discharge pipe, replace if needed. Repair any damages, if needed, to the existing pump station PVC drain pipe back to existing condition.
- As-constructed survey documenting the completed construction providing final elevations and contours of all structures, inverts, and slopes built as part of this project.

EXHIBIT #2

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

The entire cost of the work and the material necessary to complete all items shown on the Contract Documents or specified herein, shall be included and merged into the pay items in the Proposal Schedule. All payments shall be subject to the conditions of the contract documents. Any work shown on the plans and not specifically listed is to be included in these items.

All pay items shall include materials, transportation expenses to the job site, cost of installation, maintenance during construction, guarantees and warranties (if applicable), profit, sales tax, license, permits, and other taxes required for the completion of the project in-place for each item in the Proposal Schedule. Payment for items on a “lineal foot basis” shall be measured upon the horizontal plane after installation, and through all fittings for pipelines. Payment for items will be made after installation.

No additional compensation will be allowed for any item beyond the limits as shown on the Contract Drawings without prior written approval of the Owner. For earthwork items, no adjustment to the extended cost, as bid, will be made unless the measured quantity differs from the bid quantity by greater than 25%.

CHASE GULCH DAM & RESERVOIR TOE DRAIN REPAIR

Bid Item #1 – Mobilization/Demobilization

1. Includes the mobilization and demobilization of personnel, equipment, and temporary construction facilities to the project site and their subsequent removal. Provide bonds and insurance, temporary utilities, detailed construction schedule, surveying, and project specific overhead, required to complete this project.
2. Payment will be made at the contract **Lump Sum** price in installments:
 - a. 50% when 5% of the job not including mobilization has been completed, including partial payments.
 - b. And the final 50% when 50% of the job not including mobilization has been complete, including partial payments.

Bid Item #2a – 8-inch Diameter Spillway Drain Pipe, #67 Rock Filter and Cleanout

1. Measurement and payment for Construction of the 8” Diameter Spillway Drain Pipe, #67 Rock Filter and Cleanout shall be paid at the contract unit price per **Linear Feet**.

Furnish all equipment, labor, and materials for the complete construction of the 8-inch Diameter Spillway Slotted Drain Pipe, #67 rock filter and cleanout. This item includes, but is not limited to, surveying of alignment, excavation of the pipeline trench, stockpiling excavated material, purchase and delivery of 8-inch diameter solid slotted PVC pipe, purchase and delivery of #67 rock, placement and compaction of #67 rock filter, slotting of 8-inch diameter PVC drain pipe, installation of 8-inch diameter PVC pipe and associated fittings, installation of cleanout PVC piping, forming, steel reinforcement installation, installation of steel box cover, placement of concrete collar, curing concrete, PVC cap, installation of tee post, subgrade preparation, moisture conditioning of backfill, backfilling and compaction of the drain pipe trench with excavated materials, in-place density and moisture tests of placed compacted #67 rock filter and trench backfill, spreading of unused soils from excavation in nearby approved areas, submittals, and any incidental items associated with construction of the 8-inch diameter spillway drain pipe, #67 rock filter and cleanout for all construction activities as specified herein, shown on the drawings, or designated by the Owner/Engineer.

Bid Item #2b – Chimney Drains

1. Measurement and payment for construction of the Chimney Drains shall be paid at the contract **Lump Sum**.

Furnish all equipment, labor, and material required to construct the Chimney Drains. This item includes, but is not limited to, submittals, excavation and stockpiling of excavated materials, placement and compaction of #67 rock, in-place density testing of the compacted #67 rock, spreading of unused soils from excavation, and any incidental items associated with the construction of the Chimney Drains as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #2c – Spillway Drain Riprap

2. Measurement and payment for the placement of Spillway Drain Riprap shall be paid at the contract **Lump Sum**.

Furnish all equipment, labor, and material required for the complete placement of Spillway Drain Riprap. This item includes, but is not limited to, submittals, excavation, foundation preparation, installation of geofabric, placement of riprap bedding, compaction of riprap bedding, delivery and stockpiling of type M riprap, placement of type M riprap, submittals, and any incidental items associated with the complete placement of the Spillway Drain Riprap as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #2d – Spillway Drain Concrete Headwall

1. Measurement and payment for the construction of the Spillway Drain Concrete Headwall shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor and material required for the complete construction of the Spillway Drain Concrete Headwall. This item includes, submittals, but not limited to, forming, reinforcement steel installation, concrete placement, concrete testing, curing and blanketing, pipe penetration preparation, backfilling and compaction of foundation and soil around headwall, submittals, and any incidental items associated with the complete construction of the Spillway Drain Concrete Headwall as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #3a – 8-inch Diameter Toe Drain Pipe, #67 Rock Filter and Cleanouts

1. Measurement and payment for Construction of the 8” Diameter Toe Drain Pipe, #67 Rock Filter and Cleanouts shall be paid at the contract unit price per **Linear Feet**.

Furnish all equipment, labor, and materials for the complete construction of the 8-inch Diameter Toe Drain Pipe, #67 rock filter and cleanouts. This item includes, but is not limited to, surveying of alignment, excavation of the pipeline trench with equipment/machinery that can handle large boulders as seen at the toe of the dam, stockpiling excavated material, purchase and delivery of 8-inch diameter slotted and solid PVC pipe, storage, purchase and delivery of #67 rock, placement and compaction of #67 rock filter, slotting of 8-inch diameter PVC drain pipe, installation of 8-inch diameter PVC pipe and associated fittings, installation of cleanout PVC piping, forming, steel reinforcement installation, placement of concrete collar, curing, steel box cover, PVC cap, installation of tee post, subgrade preparation, moisture conditioning of backfill, backfilling and compaction of the pipe with excavated materials, in-place density and moisture tests of placed compacted #67 rock filter and trench backfill, submittals, and any incidental items associated with construction of the 8-inch diameter toe drain pipe, #67 rock filter and cleanout for all construction activities as specified herein, shown on the drawings, or designated by the Owner/Engineer.

Bid Item #3b – 60-inch Diameter Manhole

1. Measurement and payment for installation of a 60-inch Diameter Manhole shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and materials to complete installation of a 60-inch Diameter pre-cast Manhole. This item shall include, but is not limited to, submittals, excavation with equipment/machinery that can handle large boulders as seen at the toe of the dam, foundation preparation, delivery of 60-inch diameter manhole, placement of manhole base and riser, sealing manhole sections with mastic, cast in place invert, drain pipe connections, placement and compaction of #67 rock around manhole, submittals, and any incidental items associated with the complete installation as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #3c – Chimney Drains

1. Measurement and payment for the construction of Chimney Drains shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and material required to construct the Chimney Drain. This item includes, but is not limited to, submittals, excavation and stockpiling of excavated materials, placement and compaction of #67 rock, in-place density testing of the compacted #67 rock, spreading of unused soils from excavation and any incidental items associated with the construction of the Chimney Drain as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #3d – Toe Drain Riprap

1. Measurement and payment for the placement of Toe Drain Pipe Riprap shall be paid at the contract **Lump Sum**.

Furnish all equipment, labor, and material required for the complete placement of Toe Drain Pipe Riprap. This item includes, but is not limited to, submittals, excavation, foundation preparation, installation of geofabric, placement of riprap bedding, compaction of riprap bedding, delivery and stockpiling of type M riprap, placement of type M riprap, submittals, and any incidental items associated with the complete placement of the Toe Drain Pipe Riprap as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #3e – Toe Drain Concrete Headwall

1. Measurement and payment for the construction of the Toe Drain Concrete Headwall shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor and material required for the complete construction of the Toe Drain Concrete Headwall. This item includes, but not limited to, submittals, forming, reinforcement steel installation, concrete placement, concrete testing, curing and blanketing, pipe penetration preparation, backfilling and compaction of foundation and soil around headwall, submittals, and any incidental items associated with the complete construction of the Toe Drain Concrete Headwall as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #3f – Portable Toe Drain Weir

1. Measurement and payment for Portable Toe Drain Weir shall be a paid on a **Lump Sum** basis.

Furnish all equipment, labor, and materials for Portable Toe Drain Weir. Work includes, but is not limited to, purchasing and delivery to site of portable toe drain weir, calibrating portable weir using 5-gallon bucket and stop watch, provide weir to owner, submittal and any incidental items associated with portable toe drain weir as specified herein, shown on the drawings, or designated by the Owner/Engineer.

Bid Item #3g – Videotaping of Drains

1. Measurement and payment for the Videotaping of the Drains shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and materials to complete the Videotaping of the Drains. This item includes, but is not limited to, videotaping the drains after construction is completed, 4 sets of DVDs of both drains and any incidental items associated with the complete videotaping of the drains as specified herein, shown on the drawings or designated by the Owner/Engineer

Bid Item #3h – Removal and Replace Existing Electrical Conduit and Well and Repair of Pump Station PVC drain

1. Measurement and payment to Removal and Replace Existing Electrical Conduit and Well and Repair Pump Station PVC drain shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and materials for Removal and Replace Existing Electrical Conduit and Well and Repair Pump Station PVC drain. This item shall include, but is not limited to, removal and replacement of existing electrical conduit, removal if needed of one pump well that may be in conflict with the toe drain pipe, repair if needed of existing pump station PVC drain pipe, protection of OBS-2 observation well, replace portion of pump well discharge pipe that is in conflict with trench, submittals, and all other items shown or implied in the Contract Documents and in accordance with the plans and specifications.

Bid Item #4 – Erosion Control and BMPs

1. Measurement and payment for Erosion Control and BMPs shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and material, required for the complete installation Erosion Control and BMPs. This item includes, but is not limited to, installation of silt fence, hay bales, erosion and sediment control best management practices and any incidental items associated with the complete installation of erosion control and BMPS as specified herein, shown on the drawings or designated by the Owner/Engineer.

Bid Item #5 – Dewatering

1. Measurement and payment for Dewatering during the project includes lowering of the water table within the dam embankment in a controlled manner prior to toe drain excavation, dewatering during construction of spillway trench excavation, toe drain trench excavation, spillway drain pipe installation, toe drain pipe installation, manhole installation, concrete head wall construction and riprap placement shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor, and materials for the complete dewatering system for lowering the water table within the dam embankment prior to excavation of the toe drain, dewatering during construction of all items including the toe drain pipe, spillway pipe, manhole, concrete headwalls, chimney drains, cleanouts, and riprap placement. This item includes, but is not limited to, obtaining and complying with required permits, all subcontractors, engineering, design, pumping, power supply, earthwork, metering, submittals, and any incidental items associated with providing dewatering for all construction activities as specified herein, shown on the drawings, or designated by the Owner/Engineer.

Bid Item #6 – Record Drawing Survey

1. Measurement and payment for the Record Drawing Survey shall be paid at the contract **Lump Sum** price.

Furnish all equipment, labor and materials required for Record Drawing Survey. This item includes, but is not limited to, surveying toe drain and spillway drain pipes invert elevations, surveying of drain pipes alignment, surveying invert and rim elevations of structures, and any incidental items associated with Record Drawing Survey as specified herein, shown on the drawings, or designated by the Owner/Engineer. Information to be provided in digital format to the engineer.

CITY OF CENTRAL
EXHIBIT #3 - CHASE GULCH DAM & RESERVOIR TOE DRAIN REPAIR

DATE: _____

BID FORM

	<i>Construction Item</i>	<i>Quantity</i>	<i>Unit</i>	<i>Cost</i>	<i>Extension</i>
1	Mobilization & Demobilization	1	LS	\$	\$
2	Spillway Drain				
a.	8-inch Diameter Spillway Drain Pipe, #67 Rock Filter and Cleanout	72	LF	\$	\$
b.	Chimney drains	1	LS	\$	\$
c.	Spillway Drain Riprap	1	LS	\$	\$
d.	Spillway Drain Concrete Headwall	1	LS	\$	\$
3	Toe Drain				
a.	8-inch Diameter Toe Drain Pipe, #67 Rock Filter and Cleanouts	132	LF	\$	\$
b.	60-inch Diameter Manhole	1	LS	\$	\$
c.	Chimney drains	1	LS	\$	\$
d.	Toe Drain Riprap	1	LS	\$	\$
e.	Toe Drain Concrete Headwall	1	LS	\$	\$
f.	Portable Toe Drain Weir	1	LS	\$	\$
g.	Videotaping of Drains	1	LS	\$	\$
h.	Remove and Replace Electrical Conduit and Well, Repair Existing Pump Station PVC Drain	1	LS	\$	\$
4	Erosion Control and BMPs	1	LS	\$	\$
5	Dewatering	1	LS	\$	\$
6	Record Drawings Survey	1	LS	\$	\$
TOTAL BID					\$

Total Bid (in words): _____



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ARTICLE 1

GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 “Application for Payment” means the Contractor’s request for payment submitted to the Project Manager according to the process set forth in paragraphs 9.3.1- 9.3.4.

1.1.2 “Bidding Documents” means the Notice to Bidders; Request for Proposals; Invitation to Bid; Instructions to Bidders; Bid Proposal; Bid Schedule; and Bid Bond, as applicable.

1.1.3 “Certificate for Payment” means the amount approved for payment by the Project Manager after the receipt of the Contractor’s Application for Payment, as more fully defined in paragraph 9.4.1.

1.1.4 “Change Order” means a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; or the extent of the adjustment in the Contract Time, if any, as more fully defined in paragraph 7.2.

1.1.5 “Claim” means a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Construction Contract, or other disputes between the Owner and Contractor arising out of or relating to the Construction Contract.

1.1.6 “Construction Change Directive” means a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, as defined more fully in paragraphs 7.3.1-7.3.9.

1.1.7 “Construction Contract” or “Contract” means the entire and integrated agreement between the parties hereto, evidenced by the Contract Documents, which supersedes all prior negotiations, representations, or agreements, either written or oral, subject only to amendment or modification as permitted by Article 7.

1.1.8 “Contract Documents” means the Construction Contract, the Conditions of the Contract (General, Special, Supplementary and other Conditions, as applicable), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all other documents listed in the Contract, including the Bidding Documents, the Notice of Award, Notice to Proceed; Performance, Payment, Maintenance and Warranty Bond; Certificates of Insurance; and Tax-Exempt Certificates. Nothing contained in the Contract Documents creates any contractual relationship between the Owner any subcontractor, sub-subcontractor, or supplier of equipment or materials (except as provided in paragraph 5.3 hereof).

1.1.9 “Contract Sum” means the amount stated in paragraph 2.01 of the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

1.1.10 “Contract Time” means the period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto.

1.1.11 “Contractor” means the person or entity identified as such in the Construction Contract or an

authorized representative thereof.

1.1.12 “Date of Commencement of the Work” is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Construction Contract or such other date as may be established therein.

1.1.13 The “Date of Substantial Completion” is the date certified by the Project Manager in accordance with paragraph 9.8.

1.1.14 “Day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

1.1.15 “Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.16 “Final Completion” means the finding by the Project Manager that the final Certificate for Payment should be issued based on his knowledge, information and belief that the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate for Payment, is due and payable, as more fully defined in paragraph 9.10.1.

1.1.17 “Modification” means (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Order for a Minor Change in the Work approved by the Owner pursuant to paragraph 7.4.

1.1.18 “Notice to Proceed” means the form issued by the City and accepted in writing by the Contractor that notifies Contractor to begin work on or before a date certain, establishes an end date, and returns bid security.

1.1.19 “Order for a Minor Change in the Work” means an order issued by the Project Manager adjusting the Contract Sum or extending the Contract Time as permitted by paragraph 7.4.1.

1.1.20 “Owner” means the person or entity identified as such in the Construction Contract or an authorized representative thereof. The term “City of Central” or “City” may be used interchangeably with the term “Owner”.

1.1.21 “Project” means the total construction of which the Work performed under the Construction Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.22 “Project Manager” means the City representative identified as such in Part 5 of the Contract.

1.1.23 “Project Manual” means the volume usually assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract, and Specifications.

1.1.24 “Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services.

1.1.25 “Subcontractor” means a person or entity who has a direct contract with the Contractor to perform

any of the Work at the site or an authorized representative thereof. "Subcontractor" does not include any separate contractor or his subcontractor.

1.1.26 "Substantial Completion" means the stage in the progress of the Work when the Work (or designated portion thereof that the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use as more fully explained in paragraph 9.8.

1.1.27 "Sub-subcontractor" means a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work at the site or an authorized representative thereof.

1.1.28 "Underground Utilities" means any below ground line, structure, facility or installation used by a utility or service provider including, but not limited to, telephone company lines, cable and conduit; cable television lines, cable and conduit; internet lines, cable and conduit; sewer lines and water lines, including individual sewer and water service lines; stormwater lines; gas lines; electrical lines, cables and conduit; and traffic signal lines, cable and conduit.

1.1.29 "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations for the completed construction required by the Contract Documents. The Work may constitute the whole or a part of the Project.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and shall be maintained by the Project Manager.

1.2.2 By executing the Construction Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, and having familiarized himself with the site construction circumstances of the Project, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Project Manager of such fact.

1.2.3 The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications or any differences within the Drawings themselves or within the Specifications themselves have been referred to the Owner by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all Bidders.

If any such differences or conflicts were not called to the Owner's attention prior to submission of bids, the Project Manager shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform

the Work at no additional cost or Contract Time to the Owner in accordance with the Project Manager's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." The fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.7 Interpretation of Contract Documents. Masculine includes both the masculine and the feminine; singular includes the singular and the plural; headings are for reference only and are not substantive.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. The Contractor may retain one (1) record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications, and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.

ARTICLE 2

OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish surveys describing the physical characteristics, legal limitations and utility locations, if such utilities are the property of Owner, for the site of the Project, and a legal description of the site, if necessary. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine site characteristics and conditions. In connection with the foregoing,

Contractor shall locate prior to performing any Work, all Underground Utilities. If utility locate services are provided in the field by utility owners, Contractor nonetheless remains solely responsible to determine the actual location of all Underground Utilities.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Such approvals and the like shall be provided by Owner within a time and in a manner as to avoid any unreasonable delays in the Work or schedule of Contractor and shall include only such approvals for permanent facilities which are necessary to perform the Work as set forth in the Contract Documents.

2.1.3 Information or services required to be furnished by Owner shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

2.1.5 The Owner shall forward all instructions to the Contractor through the Project Manager.

2.1.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9, and 11 respectively.

2.2 OWNER'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to correct defective Work as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instructions of the Project Manager or Owner when based on the requirements of the Contract Documents, the Owner or the Project Manager, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner and the Project Manager to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven (7) day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under paragraph 2.2.1 hereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation and additional services and expenses made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission discovered. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents hereof unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving an error, inconsistency or omissions in the Contract Documents that Contractor recognized or reasonably should have recognized, without such notice to the Owner, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of all costs related to correcting such inconsistent performance. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.1.1.1 If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any member of its organization, or any of its subcontractors, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency, or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress, render a decision. If Contractor fails to give such notice and proceeds with such work, it shall correct any such error, inconsistency, or omission at no additional cost to Owner.

3.1.2 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Manager at once.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.12.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely (subject to the terms and provisions of Article 4 hereof) responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, and shall advise the Owner if the specified procedure deviates from good construction practice or if following the procedure will affect any warranties, and may propose any alternative procedure which the Contractor will warrant.

3.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract or other arrangements with the Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.2.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Project Manager in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 13.7 by persons other than the Contractor.

3.2.4 The Contractor shall be solely responsible for locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the utility owners thereof and prospecting. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor remains ultimately responsible to determine the actual location of all Underground Utilities, facilities, structure, or installations. The Contractor shall use his own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Any delay, additional work, or extra cost to the Contractor caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

3.2.5 The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient methods of overall installation.

3.2.6 The Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work, report errors or inconsistencies to the Owner before commencing work, and review the placement of the structure(s) and permanent facilities on the site with the Owner after all lines are staked out and before foundation work is started. Contractor shall provide access to the Work for the Owner, the Project Manager, other persons designated by Owner, and governmental inspectors. Any encroachments, as revealed by an improvement survey, made by Contractor or its subcontractors (of any tier) on adjacent properties due to construction, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of the Contractor and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.1.1 Colorado labor shall be employed to perform the Work to the extent of not less than eighty (80%) percent of each type or class of labor in several classifications of skilled and common labor employed on such project or public works. "Colorado labor," as used in this Article, means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, religion, creed, national origin, sex, age, or handicap.

3.3.1.2 Preference is hereby given to materials, supplies, and provisions produced or manufactured in Colorado, quality being equal to articles offered by competitors outside the State.

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

3.4.3 Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

3.3.4 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by the Contractor in accordance with the Contract Documents.

3.4 TRAFFIC CONTROL

3.4.1 The Contractor shall be responsible for maintenance, control, and the safeguarding of traffic affected by the Work as further outlined herein, and as may otherwise be provided in the Contract Documents.

3.4.2 During construction, the Contractor shall provide for the safety of the workmen and for the safe and expeditious movement of traffic and pedestrians through the Site by erecting and maintaining all necessary signs, barricades, or other traffic safety devices. He shall also provide and maintain, in a safe condition, temporary approaches or crossings at intersections with trails, roads, streets, businesses, parking lots, residences, garages, and farms unless this requirement is waived by the Owner, through the Project Manager. The Contractor shall also have a Certified Traffic Control Supervisor ("TCS") responsible for traffic control. The TCS shall be on Site at all times when traffic control is in place or as agreed by the Owner through the Project Manager.

3.4.2.1 Before commencing with construction, the Contractor shall submit to the Owner (1) the name of the certified TCS, (2) a detailed traffic control plan for approval, including no parking requirements, and (3) an access maintenance plan. Details in the plans will include, but not be limited to: hours of Work; placement of signs and barricades; use of traffic control devices such as cones, barriers, and barricades; use of traffic control devices such as signal control, temporary striping, maintenance of detours, dust abatement,

and length of lane closure tapers. In general, the traffic control/access maintenance plan(s) shall cover all the various phases of the Work.

3.4.2.2 The access maintenance plan shall be developed by the Contractor and coordinated with, and based on the requirement of any affected property owners and tenants. Prior to commencing any Work that affects access to a property, the access maintenance plan must be signed by the property owner and submitted to the Owner. The access maintenance plan shall include documentation of this coordination, including approval of the access maintenance plan by signature of each affected owner and tenant. Should the Contractor be unable to obtain approval and signatures, documentation of the efforts made to obtain said approval and signatures must be submitted. The Contractor shall maintain continuous access through the Project for pedestrians, bicyclists, motorists, and disabled persons. All cost incidentals to the maintenance of access shall not be paid separately but shall be included in the Contract Sum.

3.4.2.3 The Contractor shall implement and maintain the approved traffic control/access maintenance plan throughout prosecution of the Work. The Contractor is solely responsible for claims, damages, losses, etc., arising or resulting from Contractor's failure to adhere to and maintain the traffic control plan as approved. It is understood that the traffic control plan's primary purpose is to foster the safe travel of the public while construction is in progress. It is not intended to specifically address construction traffic on Site. The Contractor is solely responsible for safety measures on the Site.

3.4.2.4 The Owner, through the Project Manager, may provide Project signs to the Contractor. The Contractor shall provide and place appropriate supplementary information and erect project signs at locations to be designated by the Project Manager. These advisory signs, if any, shall be installed at least seven (7) consecutive days prior to beginning of construction. Any other traffic control signs/devices shall be installed seventy-two (72) hours prior to starting construction. Cost for additional information and erection of advisory signs are considered incidental to the Traffic Control bid item and costs for such shall be included in the Traffic Control bid item, if Traffic Control is a separately stated item in the Form of Bid. All costs associated with traffic control shall be included in the Contract Sum. Traffic control devices that are no longer necessary shall be removed from the Site within seventy-two (72) hours.

3.4.2.5 The Contractor will not be permitted to have construction equipment or materials in the lanes open to traffic at any time unless permitted by Owner. If the Owner, through the Project Manager, waives the above condition, the Contractor must provide a flag person. The Contractor shall remove and reset all construction signs prior to construction. Any damaged signs shall be replaced in kind by the Contractor.

3.4.2.6 The Contractor is cautioned that all personal vehicle and construction equipment parking will be prohibited where it conflicts with safety, access, or the flow of traffic.

3.4.3 The Contractor will furnish signs, barricades and temporary markings that may be necessary. The barricades shall conform to the *Manual of Uniform Traffic Control Devices* ("MUTCD") requirements.

3.4.4 Streets may be closed to through traffic only after the City has approved such closure and all requisite permits for work in a public way have been obtained. Street closures shall be made in such a manner as to provide for maximum public safety and public convenience. They shall be opened to through traffic at such time as the Work has been completed, or as the City or appropriate governmental agency with jurisdiction over such roadway may direct.

3.4.5 The City will make all necessary adjustments to traffic signals and traffic signal activators on City rights-of-way at no cost to the Contractor. The Contractor, as required by Contractor's construction schedule and with approval of the Project Manager, will cover or remove existing signs or signals that interfere with, or conflict with construction signing. Upon completion of the Project, the Contractor will reset all such signs.

3.4.6 Detours shall be the sole responsibility of the Contractor unless otherwise provided in the Contract Documents. Detours such as side street crossings, temporary bridges over freshly placed concrete, utilization of one (1) or more lanes of the construction area for maintenance of traffic, and such related facilities for the maintenance of traffic shall be the responsibility of the Contractor, the costs for which shall be included in the appropriate unit price or lump sum portion of the Contract Sum, as applicable. Detour plans must be submitted and approved in writing by the City through the Project Manager as part of the traffic control/access maintenance plan.

3.4.7 Local traffic shall be provided access to private properties at all times, except during some urgent stages of construction when it is impracticable to carry on the construction and maintain traffic simultaneously, such as for the placing of asphalt concrete pavement, deep sewer excavations which prohibit safe travel of vehicular traffic, or other similar circumstances.

3.4.8 Emergency traffic such as police, fire, and disaster units shall be provided reasonable access at all times.

3.4.9 The Contractor shall take every precaution to protect pedestrian and vehicular traffic.

3.4.10 Where parking is a hazard to through traffic or to the construction Work, it shall be restricted either entirely or during the time when it creates a hazard. Signs for this purpose will be initially furnished and placed by the Contractor. The Contractor shall be responsible for and shall maintain the signs if they are used on any street that is directly or indirectly involved in the construction Work.

3.4.11 The Contractor shall furnish at his own expense all flagmen who may be needed.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Experienced manufacturer's representatives shall be used to supervise the installation of equipment as may be required by the Owner. Any special tools or equipment which may be required for first class work shall be provided by the Contractor.

3.5.3 The acceptance at any time of materials or equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality or uniformity, to the material or equipment specified, or are not as represented to the Owner.

3.5.4 In the absence of detailed specifications, all materials shall conform to the latest standards of the American Society for Testing Materials (ASTM) available at the time notice inviting Contractors to bid is published unless otherwise indicated.

3.5.5 Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specifications or specifications available at the time notice inviting contractors to bid is published unless otherwise indicated.

3.5.6 Within one (1) year after the date of final acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Contractor or his agent, the Contractor shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense. In case of an emergency, the Contractor will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Contractor to respond to the notification shall result in the Owner making the necessary repairs at the Contractor's expense. This obligation shall survive termination of the Contract.

3.5.7 Should the Owner claim by written communication before the warranty period expires that certain defects exist and that these require repair or replacement, the warranty period and applicable surety shall be automatically extended for as long as these defects remain unremedied.

3.5.8 Nothing in the Contract Documents shall be interpreted to alter the controlling provisions of 23 C.F.R. 635.413 related to guaranty and warranty clauses allowed on federal aid projects. The warranty provisions will only be applicable to the specific construction product(s) or feature(s) identified with particularity in the Contract Documents. The warranty shall not apply to routine maintenance items (which are not eligible for federal participation).

3.6 TAXES

3.6.1 All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the Owner are exempt from State and other State-collected sales and use taxes and from City sales and use taxes. However, such materials may be subject to sales and use taxes imposed by other local taxing authorities.

3.6.2 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the City for three (3) years after the completion of the Project.

3.6.3 All applicable taxes are to be paid by Contractor and are to be included in appropriate bid items; except that, the Contractor shall not be reimbursed for any State or other sales or use taxes incurred as a result of failure to obtain an exemption certificate prior to City's issuance of the Notice to Proceed.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain any necessary building permit and applicable inspections and shall secure and pay for all other permits and governmental fees, licenses and inspections by other jurisdictions necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required.

3.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.7.3 It is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes or in the exercise of due care should observe that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any suggested changes shall be made

to the Owner. The Contractor shall notify the Project Manager of all conflicts between the Drawings and Specifications and any laws, ordinances, rules, regulations, or restrictions that come to the Contractor's attention or should have come to his attention in the exercise of due care.

3.7.4 It is the responsibility of the Contractor to make certain that all his Work is done in accordance with applicable laws, statutes, building codes and regulations, and the Contractor shall bear any costs related to his failure to do so.

3.7.5 If the Contractor performs Work, including without limitations, the installation of any materials or equipment that it knows, or reasonably should know, would be contrary to laws, statutes, ordinances, building codes, rules, and regulations, the Contractor shall assume full responsibility for such work and shall bear all costs attributable to the correction thereof or related thereto, including all fines and penalties.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid unreasonable delay in the Work;
- .2 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- .3 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .4 whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

3.9.2 Contractor shall assign a person to be and remain the Superintendent to generally and directly supervise and coordinate the performance of the Work. The naming of such person is and was a material inducement to Owner to enter into the Contract. If such person is not the Superintendent or does not remain the Superintendent for any reason whatsoever, the Owner reserves the right to review and approve or disapprove said Superintendent's replacement, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause.

3.9.3 Owner shall have the right, upon notice, to demand that the Superintendent or other key personnel retained by Contractor be replaced by Contractor. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract, may, at Owner's option, be terminated for cause.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Contractor, at the preconstruction conference, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work, in such form and detail as Owner may require and a traffic control plan as required by paragraph 3.4. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to the Project Manager with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Owner for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.

3.10.2 The Contractor shall prepare and keep current, for the Project Manager's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Project Manager reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections (all changes and selections to be approved by the Owner in advance) made during construction, and approved Shop Drawings, Product Data and Samples and similar required submittals. These shall be available to the Project Manager and shall be delivered to him for the Owner upon completion of the Work.

3.11.2 At the Date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the following documents (unless directed otherwise by Owner) to the Project Manager for submittal to the Owner: record drawings showing the field changes and selections affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of the Drawings. The Contractor shall maintain at the job site one (1) set of Drawings and indicate thereon each field change as it occurs.

3.11.3 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be delivered in hard copy **and** in a electronic/digital format acceptable to the Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 The Contractor shall review, approve and submit to the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

3.12.5 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's or Project Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.8 The Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those required by the Owner on previous submittals.

3.12.9 When professional certification of performance criteria of materials, systems, or equipment is required of the Contractor by the Contract Documents, the Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. If any or all such calculations or certifications are found to be inaccurate or incomplete, Contractor shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of Owner's additional services associated with the verification of such calculations or certifications, and the expense of Owner's additional services made necessary by the failure of such calculations or certifications to be accurate or complete.

3.12.10 Contractor shall furnish Owner with copies of all operator's instructions, service and parts manuals, and all other literature received by Contractor from the manufacturer or supplier of equipment furnished under the Contract. All operator's instructions, service and parts manuals, and all other such literature shall be bound in permanent binders satisfactory to the Project Manager.

3.12.11 Copies of any manufacturer's guaranty or certificate as may be required by the Contract Documents or normally included with the product, shall be submitted to the Owner through the Project Manager prior to the acceptance of the Work by the Owner.

3.12.12 Throughout the progress of construction, the Contractor shall maintain a careful up-to-date record of all changes on the plans and drawings during actual construction. Upon completion of Work, and prior to acceptance by the Owner, the Contractor shall file with the Project Manager one (1) set of complete drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall indicate in part the exact routing, if changed from drawing location, of Underground Utilities, condenser water lines, fuel oil tanks and lines, fire protection lines and any other major buried utility lines, and routing of conduit runs which are buried or concealed in concrete slabs. Such information may be used to prepare record drawings for the Owner.

3.12.13 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy **and** in a electronic/digital format acceptable to the Owner.

3.13 USE OF SITE

3.13.1 The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and shall use due care in placing construction tools, equipment, excavated materials, materials and equipment for installation and supplies, so as to cause the least possible damage to property and interference with traffic. The placing of such tools, equipment, and materials shall be subject to the approval of the Project Manager. If it is necessary or desirable that the Contractor use land outside the Owner's right-of-way or other appropriate permit or easement(s), the Contractor shall obtain consent from, and shall execute a written agreement with, the owner of any such land, as well as tenants and/or occupants of such property if required. The Contractor shall be solely responsible for all associated costs, including clean-up and restoration. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner, tenant or occupant because of the performance of the Work, the 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. The Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Owner, the Project Manager, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner, occupant or tenant against Owner, the Project Manager, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

3.13.2 The Contractor shall protect, shore, brace, support and maintain all Underground Utilities, drains, and underground construction uncovered or otherwise affected by the construction work performed by him.

3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. It is the intent of the Contract

Documents that all areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the Owner.

3.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate contractor except with the prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project, as well as all his tools, construction equipment, machinery and surplus materials. The Contractor shall leave the site clean and ready for use or occupancy by the Owner at Substantial Completion of the Work. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 COMMUNICATIONS

3.16.1 The Contractor shall forward all communications to the Owner through the Owner's Project Manager, except as the Owner may otherwise direct in writing.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall protect, defend, indemnify and save harmless the Owner, and each of Owner's officers, agents, servants and employees, including the Project Manager from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, or the Owner's officers, agents, servants, or employees, unless otherwise specifically stipulated in the Contract Documents.

3.17.2 If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor or his Surety shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.17.3 The Contractor shall pay all royalty and license fees.

3.18 **INDEMNIFICATION**

3.18.1 The Contractor agrees to indemnify and hold harmless the Owner, the Project Manager, and their officers, employees, consultants, agents and insurers, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any Subcontractor, or which arise out of any workers' compensation claim of any employee of the Contractor or of any employee of any Subcontractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

3.18.2 In any and all claims against the Owner or Project Manager, or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any supplier to the Contractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3.18.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, or any such Subcontractor, supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The indemnity set forth in this paragraph 3.18 shall also cover the City's defense costs, in the event that the City, in its sole discretion elects to provide its own defense. The City retains the right to disapprove counsel, if any, selected by Contractor to fulfill the forgoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain at its own expense any additional insurance that it deems necessary for the City's protection in the performance of the Construction Contract.

3.18.4 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 this paragraph 3.18, will survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

3.18.5 RESERVED

3.19 **ATTORNEYS FEES**

3.19.1 In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Construction Contract, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

3.20 **RESERVED**

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 PROJECT MANAGER

4.1.1 Subject to the limitations set forth in paragraph 5.01 of the Construction Contract, the Project Manager is empowered to act for Owner during the construction of the Work.

4.1.2 In case of termination of employment of the Project Manager, Owner may at any time employ or retain any other person it may deem qualified to perform all or any part of the duties of the Project Manager hereunder or to exercise any of its rights hereunder. Owner shall notify all parties in writing, setting forth the scope of said replacement of Project Manager's duties and responsibilities, prior to making this change.

4.2 PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction and until final payment is due. The Owner's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 RESERVED

4.2.3 The Project Manager will not have control or charge of safety precautions and programs or any construction means, methods or decision-making in connection with the Work.

4.2.4 The Project Manager shall at all times have access to the Work wherever it is in preparation and progress.

4.2.5 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by Owner, the Owner and Contractor shall endeavor to communicate through the Project Manager, provided, however, that Owner may instruct, correspond, or negotiate with Contractor directly. Communications by and with subcontractors and suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Project Manager.

4.2.6 Based on the progress and quality of the Work, an evaluation of the Contractor's Applications for Payment, and all other information available, the Project Manager will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in paragraph 9.4.

4.2.7 The Project Manager will have the responsibility and authority to reject Work which does not conform to the Contract Documents. Whenever the Project Manager considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Paragraph 13.7 whether or not such Work has been fabricated, installed or completed.

4.2.8 The Project Manager will promptly review and approve or reject or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, for conformance with information given and the design concept expressed in the Contract Documents. Such action shall be taken

with reasonable promptness so as to cause no delay in the Work or in the activities of the Contractor or separate contractors, while allowing sufficient time in the Project Manager's reasonable judgment to permit adequate review. The Project Manager's review of the Contractor's submittals shall not relieve the Contractor of any of Contractor's obligations under the Contract Documents. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Project Manager will prepare Change Orders in accordance with Article 7, and will have authority to order Minor Changes in the Work as provided in paragraph 7.4.1. All Change Orders, Construction Change Directives, and Field Directives shall require the approval of Owner in writing to be binding on Owner.

4.2.10 The Project Manager shall determine the date(s) of Substantial Completion and Final Completion, shall issue a Certificate of Substantial Completion when and as required by the Contract Documents, will receive, review, and maintain written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Claims must be made by written notice to the Project Manager. The responsibility to substantiate claims shall rest with the party making the claim.

4.3.2 RESERVED

4.3.3 Time limits on Claims. Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by change order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as may be agreed to in writing by the Owner.

4.3.5 Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents; or
- .4 Faulty or defective Work appearing after Substantial Completion.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the

character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the site, familiarizing himself with the local conditions under which the Work is to be performed and correlating his observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of Underground Utilities which differ from locations provided by the utility companies. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceeding pursuant to paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3.

If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written Order for a Minor Change in the Work issued by the Project Manager, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive. Such claims shall be subject to Paragraph 8.3.

4.3.8 Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. Such claims shall be subject to Paragraph 8.3

4.3.9 Injury or damage to person or property. Subject to the Parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in paragraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Project Manager will review all claims by the Contractor and take one (1) or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the Contractor, (2) submit a schedule to the Contractor indicating when the Owner expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the Owner, or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.4.2 If a claim has been resolved, the Project Manager will prepare or obtain appropriate documentation.

4.4.3 If a claim has not been resolved, the Contractor shall within ten (10) days after the Project Manager's preliminary response, take one (1) or more of the following actions: (1) submit additional supporting data requested by the Project Manager, (2) modify the initial claim, or (3) notify the Project Manager that the initial claim stands.

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Project Manager, the Project Manager will notify the Contractor in writing that the Project Manager's decision will be made within ten (10) days, which decision shall be considered advisory only and not binding in the event of litigation with respect to the claim. Upon expiration of such time period, the Project Manager will render to the parties the Owner's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 5

SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Construction Contract, shall furnish to the Project Manager in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity.

5.1.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable and timely objection under the provisions of paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.1.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by paragraph 5.2.1.

5.1.4 The Contractor shall make no substitution for any subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.1.5 RESERVED

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall

preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this paragraph 5.2, and, upon written request of the subcontractor, identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to Owner (and Owner's assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in writing. It is agreed and understood that Owner may accept said assignment at any time during the course of construction prior to Final Completion. Upon such acceptance by Owner, (1) Contractor shall promptly furnish to Owner true and correct copies of the designated subcontract agreements and purchase orders, and (2) Owner shall be required to compensate the designated subcontractors or suppliers only for compensation accruing to such parties for work done or materials delivered from and after the date on which Owner determines to accept the subcontract agreements or purchase orders. All sums due and owing by Contractor to the designated subcontractors or suppliers for Work performed or material supplied prior to Owner's acceptance of the subcontract agreements or purchase orders shall constitute a debt between such parties and Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion. Contractor shall deliver or cause to be delivered to Owner a written acknowledgment in form and substance satisfactory to Owner from each of its subcontractors and suppliers of the contingent assignment described herein no later than ten (10) days after the date of execution of each subcontract agreement and purchase order with such parties.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Construction Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each

separate Construction Contract.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by the Owner. If the Contractor claims additional cost because of any such revisions, the Contractor shall make such claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors access to the site and all areas of the Work as may be reasonably necessary for the performance of their work, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for proper execution and results of Contractor's Work or render it incompatible with Contractor's Work. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects not then reasonably discoverable.

6.2.3 Subject to Paragraph 8.3 hereof, any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other completed or partially completed construction or property on the site or to property of any adjoining owner or other party, the Contractor shall promptly remedy such damage as provided in paragraph 10.2.4.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, employees, and agents, to the full extent as agreed to under paragraph 3.18.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor, separate contractors, and the Owner as to their responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.15, the Owner may clean up and allocate the cost thereof among the contractors responsible therefor.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, only by Change Order, Construction Change Directive, or Order for a Minor Change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between the Owner and the Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Project Manager alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or Order for a Minor Change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price if reasonable.

- .1 The term “substantial inequity” shall be construed to apply only to the following circumstances: (1) when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or (2) when a major item of work is increased in excess of one hundred and twenty five percent (125%) or decreased below seventy five percent (75%) of the original contract quantity. A major item is defined to be any item having an original contract value in excess of ten percent (10%) of the original contract amount
- .2 Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

The Contract Sum and the Contract Time may be changed only by Change Order.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in

paragraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Construction Contract, order changes in the Work within the general scope of the Construction Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in paragraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all subcontractors and sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this paragraph 7.3.6, actual costs shall be defined as and limited to the following:

- .1 costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- .2 costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;
- .3 reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and
- .4 costs of premiums for all bonds (if any), permit fees, and sales, use or similar taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general conditions cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.

7.3.7 Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 8.3 hereof.

7.3.9 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Project Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DATE OF COMMENCEMENT OF THE WORK

8.1.1 The Date of Commencement of the Work shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Construction Contract. By executing the Construction Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall begin the Work on the Date of Commencement of the Work. The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the

Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed, disrupted, or otherwise interfered with at any time, or from time to time, in the performance of the Work, the rights and obligations of the parties with respect to such delay shall be as set forth in this subparagraph 8.3. Contractor's exclusive remedy for any delay, disruption, or interference shall be as set forth in this subparagraph 8.3.

8.3.1.1 Any delay within the control of the Contractor or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Contractor or one (1) or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Contractor, and the Contractor shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

8.3.1.2 Upon the occurrence of any delay which will affect the Date of Substantial Completion caused by fire, flood, unusually severe weather or other act of God, or by court order, unforeseen, concealed, or differing condition related to the Work or other factors beyond the reasonable control of any party hereto or his agents, employees or subcontractors, then the period of performance specified herein shall be extended by Change Order or Construction Change Directive, on a day-for-day basis, but such extension shall not result in any increase in the Contract Sum, and provided that Contractor complies with subparagraph 8.3.1.4 below.

8.3.1.3 Upon the occurrence of any delay which will affect the Date of Substantial Completion not concurrent with delays described under subparagraphs 8.3.1.1 and 8.3.1.2 above, which is proximately caused by acts or omissions within the control of the Owner, his agents or employees, the period of performance specified herein shall be extended by Change Order or Construction Change Directive on a day-for-day basis and the Contractor shall be entitled to reimbursement of actual, proven costs reasonably and necessarily incurred as a direct consequence of such delay, but not in excess of the amount above the Contract Sum for each day of such delay as specified in the Contract Documents.

8.3.1.4 Any claim for an extension of time under subparagraphs 8.3.1.2, and 8.3.1.3 above, and any claim for additional compensation authorized by subparagraph 8.3.1.3 above, shall be made as follows:

- .1 The Contractor shall, within five (5) days after the onset of any delay, notify the Project Manager in writing of the causes of delay, the facts relating thereto, and the requested time extension. In the case of a continuing delay, only one (1) claim is necessary. Proof of any recoverable delay costs shall be submitted within fifteen (15) days after the end of any period of delay.
- .2 The Project Manager shall determine whether the cause for the claim for an extension of time is beyond the control of the Contractor pursuant to subparagraphs 8.3.1.1, 8.3.1.2, and 8.3.1.3 above. Owner shall either approve or disapprove the extension requested or claim made.
- .3 Should a time extension or delay cost claim be granted by the Owner, a Change Order or other notice, signed by the Owner, shall be issued to indicate the new date for completion,

or the adjustment to the Contract Sum.

- .4 Failure by Contractor to timely provide, in writing, a request for time extension, claim for delay costs, or proof of such costs, shall constitute a waiver by Contractor of any time extension or reimbursement of delay costs which Contractor may have otherwise been granted pursuant to this subparagraph 8.3.
- .5 Nothing herein shall prevent Contractor from requesting, and Owner granting, an extension of time contingent upon payment by Contractor of an agreed amount of liquidated damages in consideration of the time extension.

8.3.2 Contractor expressly acknowledges and confirms his obligation to minimize the cost impact of any delay, delay charges being an unproductive expenditure of public funds. Therefore Contractor shall, to the best of his ability, re-assign personnel and equipment, commence or accelerate unaffected portions of the Work, and otherwise employ all prudent measures available to minimize delay costs. In no event shall the Owner be liable for payment of delay costs which could have been avoided or mitigated by any means reasonably available to the Contractor.

8.4 LIQUIDATED DAMAGES

Time is of the essence of the Contract. In the event that the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or fails to meet any other time requirement set forth in the Contract, after due allowance for any time extensions granted by Owner, the Contractor shall be liable to Owner for Liquidated Damages, and not as a penalty, in the amount set forth in the table below. For each and every calendar day that Work shall remain incomplete after the Contract Time as adjusted by duly executed Change Order, the sum per calendar day shown in the following table, unless otherwise specified in the Bid, may be deducted from monies due to or to become due to the Contractor or Owner may take action to collect such Liquidated Damages from the Contractor or its Surety. This sum is fixed and agreed upon between the parties because the actual loss to Owner and to the public caused by delay in completion will be extremely difficult to determine.

All punch list items (required by paragraph 9.8.2) must be completed within thirty (30) days of Substantial Completion or Liquidated Damages as provided herein will be assessed.

Permitting the Contractor to continue and finish the Work or any part of it after the Contract Time, or after the date to which the Contract Time may have been extended, will in no way operate as a waiver on the part of Owner of any of its rights under the Contract.

LIQUIDATED DAMAGES		
Original Contract Amount From More than \$	To and Including \$	Liquidated Damages per Calendar Day (\$)*
0	150,000	500.00
150,000	250,000	600.00
250,000	500,000	800.00
500,000	1,000,000	1,400.00
1,000,000	2,000,000	2,000.00
2,000,000	4,000,000	3,300.00
4,000,000	10,000,000	3,900.00
10,000,000	-----	**

*The per day liquidated damages shall be the amount set forth in this table, or in the Standard Specifications for Road and Bridge Construction as published by the Colorado Department of Transportation controlling as of the date on which the Contract is mutually executed by the Contractor and Owner, whichever is higher.

**3,900.00 plus 300.00 per each additional 1,000,000 contract amount or part thereof over 10,000,000.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contractor will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited. The Owner reserves the right to eliminate or reduce the items of the proposal or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to subcontractors, supported by such evidence of correctness as the Project Manager may direct. This Schedule, when approved by the Project Manager, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten (10) days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 When Application for Payment includes materials stored off the Project site or stored on the Project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the Project site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly tagged and identifiable for this Project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole discretion.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Project Manager will, within ten (10) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his reasons for withholding a certificate in whole or in part as provided in paragraph 9.5.1.

9.4.2 No Certificate for Payment shall be issued unless it appears to the Project Manager that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, but without in any way waiving any of Owner's rights or claims under the Contract Documents, the quality of the Work is in accordance with the Contract Documents and that all certificates required under the Contract Documents have been furnished in proper form. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Project Manager may decline to certify payment and may withhold his certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make the determinations as provided in paragraph 9.4.2. If the Project Manager is unable to make such determinations as provided in paragraph 9.4.2 and to certify payment in the amount of the application, he will notify the Contractor as provided in paragraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which he is able to make such determinations. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to maintain accurate and up-to-date as-built drawings.

9.5.2 When the above grounds are removed, Certificates for Payment shall be made by the Project Manager for amounts withheld because of them.

9.6 PROGRESS PAYMENTS

9.6.1 After the Project Manager has issued a Certificate for Payment, the Owner shall make payment in a timely manner not to exceed forty five (45) days from the time the Project Manager issued the Certificate for Payment. The Owner may refuse to make payment on any Certificate for Payment for any default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

9.6.2 The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

9.6.3 The Project Manager may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such subcontractor.

9.6.4 The Owner shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.

9.6.5 Payment to suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.7 RETAINAGE

9.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision in this

Construction Contract, Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

- .1 Owner shall retain five percent (5%) of each progress payment to a maximum of five percent (5%) of the Contract Sum.
- .2 In no event shall the amount retained be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the Project by the Owner.

9.7 FAILURE OF PAYMENT

9.7.1 If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within ten (10) days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within forty five (45) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

9.8 SUBSTANTIAL COMPLETION

9.8.1 The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Construction Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the building or utilize the improvements on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a designated portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Project Manager a list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. 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. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Project Manager. The Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written

acceptance of the responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

9.9.2 In the event of partial occupancy, the Contractor shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.

9.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.4 In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Contractor for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of insurance and damage to the Work. Contractor's acceptance of arrangements proposed by Owner in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.5 In each instance, when the Owner elects to exercise its right of partial occupancy as described herein, Owner will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, Contractor, and the Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

9.9.6 It shall be understood, however, that partial occupancy shall not: (1) constitute Final Acceptance of any Work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.

9.9.7 Subject to the terms and conditions provided herein, if the Contractor claims that delay or additional

cost is involved because of partial occupancy by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 9.10.2 have been fulfilled. Final Payment is also subject to all City Charter and City Code requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to the Owner.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Project Manager:

9.10.2.1 Evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to (a) instruction of Owner's representatives in the operation of mechanical, electrical, plumbing and other systems, (b) delivery of keys to Owner with keying schedules, sub-master and special keys, (c) delivery to Owner of Contractor's general warranty as described in Paragraph 3.5, and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Project Manager's review and delivery to Owner, (d) delivery to Project Manager of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work;

9.10.2.2 If required by the Owner, (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner, and (d) a final waiver of liens in a form satisfactory to Owner, covering all Work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized;

9.10.2.3 In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Project Manager before approval of Final Payment;

9.10.2.4 If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through

no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Project Manager, and without terminating the Construction Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of 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.

9.10.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any special warranties required by the Contract Documents, or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager and Owner.

9.10.5 The acceptance of final payment by the Contractor, a subcontractor, or supplier shall constitute a waiver of all claims by that payee.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

10.1.2 Unless otherwise provided in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless, upon written direction of Owner.

10.1.3 Unless otherwise provided in the Contract Documents, the Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

- .1 all persons involved in or affected by the Work;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, ditches, fences, gates, private property, and utilities not designated for removal, relocation or replacement in the course of construction.
- .4 The Contractor shall take all measures necessary to mitigate the impact of weather so that the Project may continue on schedule. In no event shall the Owner be liable for extra costs incurred on materials and any part of the Work due to the Contractor's failing to take all measures necessary to protect the Work from weather and the Contractor shall not be entitled to such claims. Also, no extension of the Contract Time shall be allowed if the Contractor is able to proceed with other Work related to the Project.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss, including but not limited to the Occupational Safety and Health Act (OSHA), as applicable.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 The Contractor shall promptly remedy all damage or loss at its sole cost and expense (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor. Utility locate services provided in the field by the Owner shall not be deemed an act or omission that relieves Contractor of its responsibility hereunder. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 3.5.

10.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Paragraph 4.3, Paragraph 8.3 and Article 7.

10.4 USE OF EXPLOSIVES, DRIVING OR REMOVAL OF PILES, WRECKING, EXCAVATION WORK OR OTHER SIMILAR AND POTENTIALLY DANGEROUS WORK

10.4.1 When the use of explosives, driving or removal of piles, wrecking, excavation work or other similarly potentially dangerous work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property and shall carry on such activities under the supervision of properly qualified personnel, such potentially dangerous work shall not be undertaken unless and until the City Manager has authorized same.

10.4.2 Detonation of explosives by the Contract shall be by permit authorized by Owner. The following information must be submitted to the City Manager or to his or her designee thereof at least thirty (30) days prior to the detonation of explosives:

- .1 A graphic plan showing locations of proposed explosive use and improvements (including structures, roadways, utilities, etc.) on the property, surrounding land uses, and improvements on adjacent properties within a distance equal to 1000 feet plus the maximum distance of vibration as specified in the report described below.
- .2 A geotechnical report prepared by Colorado-registered professional engineer describing the geology of the area and the impacts of explosive use in the area, including wave attenuation and travel distance and potential impacts on improvements in the area.
- .3 An analysis of alternatives to explosives, including safety, time, and monetary comparisons of the alternatives.
- .4 The Contractor shall ensure that audible signals warning persons of danger will be given before detonation of explosives.

As a condition of permitting the detonation of explosives as part of the Work, the Developer or Contractor shall submit to the City Manager or to his or her designee thereof a certificate of insurance for coverage of detonation of explosives in the minimum following amounts: \$2,000,000 for property damage, each accident; and \$2,000,000 for public liability, bodily injury, single limit or equivalent, each accident. Owner shall be named as an additional insured on the insurance policy.

10.4.3 The Contractor shall be fully responsible for, and shall save and hold Owner harmless from, any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Construction Contract.

10.4.4 The Contractor shall notify each public utility company or other owner of property having structures or improvements in proximity to the site of the Work, of his intent to perform potentially dangerous work. Such notice shall be given sufficiently in advance to enable the companies or other owners of property to take such steps as they may deem necessary to protect their property from injury. Such notice shall not relieve the Contractor of responsibility for any damages, claims, or the defense of any actions

against the Owner resulting from the performance of such Work in connection with or arising out of the Construction Contract.

10.4.5 All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF" and shall be in the care of competent watchmen at all times. The Contractor shall also be required to obtain any permits which may be required by the South Metro Fire Rescue Authority or other fire district having jurisdiction.

10.5 UNDERGROUND UTILITIES

10.5.1 Known Underground Utilities and other underground structures are shown on the Drawings only to the extent such information has been made available to or discovered by the Owner. It is expected that there may be discrepancies and omissions in the location and quantities of actual Underground Utilities and other underground structures and those shown. This information is shown for the convenience of the Contractor, but is not guaranteed to be either correct or complete, and all responsibility for the accuracy and completeness thereof is expressly disclaimed by Owner. The Contractor shall, ahead of excavation, confirm the location of all Underground Utilities and other underground structures so that they will not be accidentally damaged by the construction operation. Contractor shall be responsible for contacting all utility owners concerning location of all above ground utilities and Underground Utilities before proceeding with the Work. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor shall verify actual location, and Contractor remains solely responsible for any claims or damage to Underground Utilities or other facilities or structures caused by excavating. Contractor is responsible for, at no additional cost to the owner, potholing all existing Underground Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any construction on the Project.

ARTICLE 11

INSURANCE REQUIREMENTS

11.1 CONTRACTOR'S INSURANCE

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the Contract Documents, including but not limited to Paragraphs 3.13, 3.17 and 3.18 hereof, in addition to any other insurance requirements imposed by the Contract Documents or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

11.1.1 Workers' Compensation Insurance. The Contractors shall procure and maintain, at its own expense, valid Workers' Compensation Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or signed certificate of insurance shall be on file with the Owner at all times. Evidence of qualified self-insurance status may be substituted for the Workers' Compensation Insurance requirements of this paragraph.

11.1.1.1 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intention of non-renewal to the Owner.

11.1.1.2 Limits of liability shall be in conformance with the statutory requirements of the Workers' Compensation Laws of the State of Colorado.

11.1.2 Comprehensive General Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive General Liability Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.2.1 The policy shall be appropriately endorsed to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

11.1.2.2 Limits of liability shall be a minimum of One Million Dollars (\$1,000,000) each occurrence; Bodily Injury and Property Damage combined, Two Million Dollars (\$2,000,000) aggregate.

11.1.2.3 The following coverages shall be included in the policy:

- .1 Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- .2 Products and completed operations.
- .3 Broad form blanket contractual liability with all exclusions deleted.
- .4 Personal injury liability.
- .5 Explosions, collapse, and underground hazards.
- .6 Broad form property damage endorsement.
- .7 Incidental malpractice.
- .8 Independent contractors.

11.1.2.4 The products and completed operations coverage shall be maintained in effect for a period of six (6) years after the date of final acceptance of the Work.

11.1.3 Comprehensive Automobile Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive Automobile Liability Insurance with a minimum limit of \$1,000,000 each accident combined single limit. A copy of a certificate of insurance shall be on file with the Owner at all times. The policy shall contain a severability of interests' provision.

11.1.3.1 The policy shall cover all owned or leased vehicles operated by the insured as well as coverage for all non-owned or hired vehicles used by the insured in the course of his operations.

11.1.3.2 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intent to non-renew to Owner.

11.1.3.3 The limits of liability shall be a minimum of One Million Dollars (\$1,000,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) per person.

11.1.4 Umbrella/Excess Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.4.1 Policy shall be in excess of all underlying insurance including employer’s liability.

11.1.4.2 Policy shall not contain any exclusions for hazards, or contractual hazards.

11.1.4.3 Limits of liability shall be a minimum of Two Million Dollars (\$2,000,000) in the aggregate.

11.1.5 Owner’s Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Owner's Liability policy in the name of the Owner.

11.1.5.1 Limits of liability shall be a minimum of Two Million Dollars (\$2,000,000) in the aggregate.

11.2 ADDITIONAL NAMED INSURED

11.2.1 The Owner shall be named as an additional insured under the Contractor’s Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor’s Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims made by the City.

11.3 GENERAL REQUIREMENTS

11.3.1 The Contractor shall file two (2) certified copies of all policies with the Project Manager before exposure to loss may occur. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The Owner reserves the right to request and receive a certified copy of any policy at any time, and any and all endorsements to said policy.

11.3.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall comply with the requirements of 11.1 above and shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner, it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

To the extent of any conflict between 11.1 and 11.3.2 above, 11.1 shall control.

11.3.3 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and

builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

11.3.4 The Contractor shall be solely responsible for ensuring that all subcontractors or suppliers obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

11.3.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining full insurance coverage to adequately insure against the risk attendant to the performance of this Construction Contract. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary.

11.3.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to this Construction Contract shall be upon the Contractor until said property has been finally accepted by Owner.

11.3.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

11.3.8 The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor to provide written notice to the Owner within two (2) days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of the Contract.**

11.3.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies, licensed in the State of Colorado and approved by the Owner and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents.

11.3.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

11.3.11 If any of the policies required under the Contract Documents shall be or at any time become unsatisfactory to the Owner as to form or substance, or if a company issuing any such policy shall be or at any time become unsatisfactory to the Owner, Owner shall so advise Contractor who shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit a certificate of insurance as hereinabove provided.

11.3.12 All liability insurance policies required by this Article shall be occurrence-based policies.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Project Manager or Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Project Manager, be uncovered for his observation and shall be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

12.1.2 If any other portion of the Work has been covered which the Owner or Project Manager has not specifically requested to observe prior to being covered, the Project Manager or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for the payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct all Work rejected by the Project Manager as incomplete, defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for any additional services made necessary thereby.

12.2.2 In addition to the Contractor's obligations under Paragraph 3.5, if, within one (1) year after the Date of Substantial Completion of the Work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work and termination of the Construction Contract. The Owner shall give such notice promptly after discovery of the condition by the Owner.

12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected or accepted by the Owner.

12.2.4 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4.

12.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Manager, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation

for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused, in whole or in part, by the Contractor's correction or removal of Work which is defective or not in accordance with the requirements of the Contract Documents.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof, or under law or in equity. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1. If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Construction Contract shall be governed by the law of the State of Colorado. Those provisions of law applicable but discretionary because of the Owner's status as a home-rule municipality shall be binding at the Owner's election.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Construction Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Construction Contract without the prior written consent of the other. The Contractor shall not assign the whole or any part of the Construction Contract or any monies due or to become due thereunder without the prior written consent of the Owner and of the surety on the Contractor's bond. Any assignment without such written consent shall be void. A copy of such consent of surety, together with a copy of the assignment, shall be filed with the Project Manager. In case the Contractor assigns all or part of any monies due or to become due under the Construction Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims and liens of all

persons, firms and corporations for services rendered; for the payment of all laborers and mechanics for labor performed; for the payment of all materials and equipment used or furnished and for payment of all materials and equipment used or rented in the performance of the Work called for in the Construction Contract; and for the payment of any liens, claims, or amounts due the Federal, State or local governments or any of their funds. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

13.3 WRITTEN NOTICE

13.3.1 All notices to be given hereunder shall be in writing, and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Construction Contract from and after the fourth day next following the date deposited in the mail, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given shall be sent to or made at the last business address known to the party giving notice.

13.4 CLAIMS FOR DAMAGES

13.4.1 Should either party to the Construction Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims by Contractor against Owner that are within the scope of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, shall be subject to, and brought in accordance with, the provisions of said Act.

13.5 PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND

13.5.1 The Contractor will be required, simultaneously with the execution of the Construction Contract, to furnish a Performance, Payment, Maintenance and Warranty Bond, in an amount equal to one hundred percent (100%) of the Contract Sum. Said bond shall be issued by a responsible surety approved by the Owner and shall guarantee the faithful performance of the Construction Contract and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in the Construction Contract. Accompanying the bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bond shall be on a form provided by the Owner.

13.5.2 The Contractor shall deliver said bond to the Project Manager no later than the date of execution of the Construction Contract. If the Contractor fails or neglects to deliver the bond, as specified, he shall be considered to have abandoned the Construction Contract and his bid security will be forfeited.

13.6 RIGHTS AND REMEDIES

13.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents.

13.6.2 No action or failure to act by the Owner, Project Manager or Contractor shall constitute a waiver of any right or duty afforded any of them under the Construction Contract, nor shall any such action or

failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13.6.3 In all actions by the Owner to enforce its rights and remedies hereunder, whether at law or equity, the Owner, in addition to all other remedies, shall be entitled to recovery of its reasonable attorneys fees and costs.

13.6.4 The Contractor agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the Owner's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Construction Contract.

13.7 TESTS AND INSPECTIONS

13.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Project Manager and the Owner timely notice of its readiness so the Project Manager and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

13.7.2 If the Project Manager or public authority having jurisdiction determines that any Work requires additional or special inspection, testing, or approval which paragraph 13.7.1 does not include, the Project Manager may instruct the Contractor to order such additional or special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph 13.7.1. If such additional or special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, the Contractor shall bear all costs of such testing, inspection, and approval procedures, including compensation for any additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.7.3 Required certificates of inspection, testing or approval, unless otherwise required by Contract Documents, shall be secured by the Contractor and promptly delivered by him to the Project Manager.

13.7.4 If the Project Manager is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the normal place of testing.

13.7.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

13.8 LITIGATION AND WORK PROGRESS

13.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13.9 EQUAL EMPLOYMENT OPPORTUNITY

13.9.1 In connection with the execution of this Construction Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, handicap, or national origin, if otherwise qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship.

13.10 COMMERCIAL DRIVER'S LICENSE SUBSTANCE SCREENING

13.10.1 The Contractor shall provide written assurance to the City that each driver that provides services requiring a commercial driver's license pursuant to this Construction Contract participates in an alcohol and controlled substances testing program that meets the requirements of the Federal Motor Carrier Safety Regulations found at 49 C.F.R. Part 382.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Construction Contract if the Work is stopped for a continuous period of sixty (60) days through no act or fault of the Contractor or a subcontractor, sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Project Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in paragraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment (without cause) within the time stated in the Contract Documents; or
- .4 if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 If one of the above reasons exists, the Contractor may, upon fourteen (14) days' advance written notice to the Owner, terminate the Construction Contract, unless this reason is cured prior to the expiration of the notice period. Contractor may recover from the Owner payment for Work properly executed in accordance with Contract Documents (the basis for such payment shall be as provided in the Construction Contract) and payment for costs directly related to work thereafter performed by Contractor in terminating such work, including reasonable demobilization and cancellation charges. The Owner shall not be responsible for damages for loss of anticipated profits on work not performed on account of any termination described in paragraphs 14.1.1 and 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Construction Contract if the Contractor:

- .1 refuses or fails to supply, in a timely manner, enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors or suppliers for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the subcontractors or suppliers;
- .3 disregards laws, ordinances, rules, regulations, or orders of the City or other governmental entity having jurisdiction;
- .4 disregards the instructions of Owner when such instructions are based on the requirements of the Contract Documents;
- .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and Contractor's surety, if any, seven (7) days' written notice, (except in cases of emergency as reasonably determined by Owner), terminate the services of the Contractor and may:

- .1 take possession of the site and project and of all materials, equipment, tools, and construction equipment and machinery thereon owned, rented, or leased by the Contractor; and
- .2 finish the Work by whatever method the Owner may deem expedient.

14.2.3 When the Owner terminates the Construction Contract for one (1) of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 To the extent the costs of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Construction Contract.

14.2.5 In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated, if any. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.2.6 In the event of termination pursuant to paragraph 14.2.5, Owner shall pay as the sole amount due to Contractor in connection with the Construction Contract, (i) sums due for Work properly executed in accordance with Contract Documents to date, including allowable profit and overhead (except retainage sums shall not be paid prior to one hundred twenty (120) days following the date of termination); (ii) reasonable cost of demobilization and cancellation charges; and as additional and special consideration for

this provision; (iii) a profit for underperformed work equal to one-half percent (0.5%) of the cost of the Work actually performed to date.

14.2.7 Upon a determination by a court of competent jurisdiction that the termination of Contractor pursuant to paragraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to paragraph 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in paragraph 14.2.6.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving written notice to Contractor specifying the part of the Work or subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted and shall properly protect and secure the part of the Work so suspended, delayed, or interrupted. If any part of the Work or subcontract is so suspended, delayed, or interrupted, Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Construction Contract. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.3.2 The rights and remedies of Owner under this Paragraph 14.3 shall be non-exclusive, and shall be in addition to all the other remedies available to Owner at law or in equity.