

Southern Ute Indian Tribe
SU 180 CEDAR POINT HOUSING
ROAD IMPROVEMENT PROJECT

Bidding Documents including:

CONTRACT DOCUMENTS
&
SPECIFICATIONS

Date: February 2022

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INVITATION TO BID
Cedar Point Road Project

INVITATION TO BID for Southern Ute Indian Tribe (“Owner”), Cedar Point Road Project located in La Plata County. Bid-Notice is hereby given that Bids from qualified contractors shall be received by the Southern Ute Indian Tribe, Tribal Planning Department in their office located at 116 Memorial Avenue, until 4:00 PM (MST) on Friday March 25, 2022, or by email to dmcdonald@southernute-nsn.gov. Each Bid must be clearly marked with the Bid Title and Firm Identification. The Owner reserves the right to reject late Bids. Bid documents will be available after 4:00 PM (MST) on March 2, 2022. A link to the bid documents may be obtained electronically by emailing Paul O’Neil at poneil@sehinc.com. The project will be constructed in one Phase. The project will consist of road reconstruction, paving, chip seal, and crack sealing. See Drawings and Bid Documents for details. A mandatory pre-bid meeting will be held on-site at 1:30 PM, Tuesday March 15, 2022, at the intersection of Lodge Pole Way and Shadow Spirit St. Deadline for Questions: All questions relating to the bid must be submitted via e-mail to Paul O’Neil at poneil@sehinc.com by 5:00 PM on Friday, March 18, 2022. An addendum with answers, if required, will be responded to via email by 5:00 PM on Monday, March 21, 2022. If an addendum is issued the contractor must acknowledge receipt of any and all addenda on the proposal form in order to submit a qualifying bid. Bids will be opened in private. Bid results may be obtained by emailing Paul O’Neil at poneil@sehinc.com. The Owner reserves the right to cancel this Bid, or reject any and all submittals, in whole or in part, when it is in the best interest of the Owner. The Owner assumes no financial responsibility / liability whatsoever for the preparation of any response to this Bid Invitation. Bids will not be accepted by telephone, or fax. It is anticipated that the project can begin in late April 2022 and shall be completed by October 31, 2022.

INSTRUCTIONS TO BIDDERS
CEDAR POINT HOUSING ROAD IMPROVEMENT PROJECT

DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the General Conditions of the Bidding Documents have the meanings assigned to them in the General Conditions.

"**Bidder**" means one who submits a Bid to Owner.

"**Sub-bidder**" is one who submits a bid to a Bidder.

"**Successful Bidder**" means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award of the Contract.

"**Bidding Documents**" includes the Invitation to Bid, Instructions to Bidders, Bid Form, and the other Bidding Documents (including all Addenda or errata issued prior to receipt of Bids).

"**Contract Time**" the number of calendar days within which, or the dates by which, the Work is to be substantially completed, is set forth in Bid Form and the Agreement.

"**Bid**" means an executed Bid Form to do the Work, including all other items and qualifications as stipulated in the Bidding Documents.

1. BIDDING DOCUMENTS

1.1. COPIES OF BIDDING DOCUMENTS

- a) Copies of the Bidding Documents may be obtained at the time and place indicated on the Invitation to Bid
- b) Complete sets of the Bidding Documents in the number and for the sum of, if any, stated in the Invitation to Bidder may be obtained from Owner
- c) Complete sets of the Bidding Documents must be used in preparing Bids; Owner does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- d) Bidding Documents are furnished to prospective Bidders only for use by Bidders and Sub-bidders in bidding for the Work, and do not confer a license or grant for any other use of the Bidding Document.

1.2. EXAMINATION OF BIDDING DOCUMENTS AND SITE

- a) Each Bidder shall, before submitting a Bid, (a) examine the Bidding Documents thoroughly, (b) visit the Site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Bidding Documents, and (e) notify Owner of all conflicts, errors or discrepancies in the Bidding Documents.
- b) Reference is made in the Special Conditions for identification of:
 - i. those reports of explorations and tests of subsurface conditions, if any, at the Site which has been utilized by Consultant in preparation of the Contract Documents. For purposes of making a Bid, Bidder may rely upon the accuracy of the technical data contained in

- such reports, but not upon non-technical data, interpretations or opinions contained therein or the completeness thereof;
- ii. those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the Site, if any, which have been utilized by Consultant in preparation of the Contract Documents. For purposes of making a Bid, Bidder may rely upon the accuracy of the technical data contained in such drawings, but not upon the completeness thereof. Copies of such reports and drawings will be made available by Company to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which Bidder is entitled to rely as provided in Paragraphs 1.2 are incorporated therein by reference. Such technical data has been identified in the Special Conditions.
 - c) Information and data reflected in the Bidding Documents with respect to Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Special Conditions.
 - d) Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions appear in Article 4 of the General Conditions.
 - e) If a soils investigation has been made for the Project, such information may be examined by each Bidder and is part of the Bidding Documents. All information obtained from geotechnical Engineers, including subsurface data, logs of soil borings, and recommendations, was obtained solely for use by the Engineer in the design of the Project. Each Bidder, however, is responsible for verifying subsurface conditions at the Site, and neither Engineer nor Owner shall be responsible for any interpretation or conclusions drawn from any geotechnical information provided to the Bidder. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing the Work in accordance with the time, price and other terms and conditions of the Bidding Documents.
 - f) On request in advance, Owner will provide each Bidder access to the Site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the Site to its former condition upon completion of such explorations.
 - g) The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents.
 - h) The submission of a Bid will constitute a representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised on performing and furnishing the Work required by the Bidding Documents with such means,

methods, techniques, sequences or procedures of construction as may be indicated in or required by the Bidding Documents, and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- i) All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Projects, shall apply to the Contract throughout.

1.3. MANDATORY PRE-BID CONFERENCE

- a) The pre-bid conference will be held at the time and place shown in the Invitation to Bid. The pre-bid conference among Owner, Engineer, prospective bidders, and others will be held to discuss the scope of the Work and to answer questions concerning the Work. No addendum will be issued at this conference, but an addendum will be issued afterwards, if necessary, to answer questions. Attendance by each prospective bidder or its representative at the pre-bid conference is mandatory, and no Bid will be opened unless the bidder or its representative was present at the pre-bid conference. All attendees must sign an attendance log giving individual name, firm represented, street address, and telephone number.

1.4. SUBSTITUTE OR "EQUIVALENT" ITEMS

- a) The Contract, if awarded, will be awarded on the basis of materials and equipment described in the Drawings or the Specifications without consideration of possible substitute or "equivalent" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "equivalent" item of material or equipment may be furnished or used by Bidder if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Bidder and consideration by Engineer is set forth in the General Conditions and may be supplemented in the Special Conditions.

1.5. INTERPRETATIONS AND ADDENDA

- a) If an addendum is issued the Bidder must acknowledge receipt of any and all addenda on the bid form in order to submit a qualifying bid.
- b) All questions about the meaning or intent of the Bidding Documents are to be directed to Owner as stated in the Invitation to Bid. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda e-mailed or delivered to all parties recorded by Owner as having received the Bidding Documents. All bid related questions must be received prior to the "Deadline for Questions" as stated in the Invitation to Bid. Late questions will not be answered. Only answers provided in formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- c) Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.
- d) The Bid Documents and any Addenda issued contain the provisions required for the construction of the Project. Information otherwise obtained from an officer, agent or employee of the Owner, or any other person shall not affect the risks or obligations assumed by the Bidder or relieve him from fulfilling any of the conditions of the contract.

2. BIDDING REQUIREMENTS

2.1. BID FORM

- a) The Bid Form is included with the Bidding Documents; additional copies may be obtained from the Owner (or the issuing office).
- b) All Bids must be made on the required Bid form. All blank spaces for Bid prices must be

filled in, in ink or typewritten, and the Bid form must be fully completed and executed when submitted. Only one copy of the bid form is required. Any improperly completed bids will not be accepted.

- c) Bids by corporations must be executed in the corporate name by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- d) Bids by partnerships must be executed in the partnership name and signed by a general or managing partner, whose title must appear under the signature and the principal address of the partnership must be shown below the signature.
- e) All names must be typed or printed below the signature.
- f) The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on Bid Form).
- g) The address and telephone number for communications regarding the Bid Form must be shown.
- h) The bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of allowances, if any, permitted in the Bidding Documents.
- i) Provisions for liquidated damages, if any, are set forth in the Supplemental Conditions.

2.2. BID SECURITY

- a) Each Bid will be required to have a bid security made payable to Owner in an amount of five percent (5%) of the Bidder's maximum Bid Price in the form of a Bid Bond.
- b) Any Bid may be withdrawn prior to the above scheduled date for the opening of Bids or authorized postponement thereof. No Bidder may withdraw a Bid within 60 (sixty) calendar days after the actual date of the opening thereof.
- c) The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within ten (10) calendar days after the Notice of Intent to Award, Owner may annul the Notice of Intent to Award and the bid security of that Bidder will be retained by Owner as liquidated damages for Bidder's failure to perform. The bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh (7th) day after the Effective Date of the Agreement or the sixtieth (60th) day after the Bid opening, whereupon bid security furnished by such Bidders will be returned. Bid security for Bids which are not competitive may be returned within ten (10) calendar days after the Bid opening.
- d) Bidders must satisfy themselves as to the accuracy of the estimated quantities in the Bid Schedule by examination of the site and review of the drawings and specifications including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or the nature of the Work to be done. Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

2.3. BIDDER'S QUALIFICATION STATEMENT

- a) To demonstrate qualifications to perform the Work, each Bidder must complete and submit the Bidder's Qualifications Statement included in the Standard Contract Forms of the Bidding Documents.

- b) Failure to accurately complete the Bidder's Qualification Statement or to submit the Statement may, at Owner's sole option, disqualify the bidder from consideration in the award of the Contract.
- c) Each Bid must contain evidence of Bidder's authority to do business in the state where the Project is located or a covenant to obtain such qualification prior to award of the Contract.

3. SUBMISSION OF BID

3.1. GENERAL

- a) Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.
- b) It is each Bidder's responsibility to deliver its Bid and bid security to the location named in the Invitation to Bid before the closing time. The fact that a Bid and a bid security were dispatched will not be considered. The Bid and bid security must actually be received to be considered.
- c) Late bids will not be considered and will be returned unopened.

3.2. MODIFICATION AND WITHDRAWAL OF BIDS

- a) If, within twenty-four (24) hours after Bids are opened, any Bidder delivers a duly executed, written notice to Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Bidding Documents.
- b) Bids may be modified or withdrawn by written notice duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

3.3. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- a) All Bids will remain subject to acceptance for sixty (60) calendar days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

4. AWARD OF CONTRACT

4.1. GENERAL

- a) Bids will be opened and awarded by the Owner at the time and place stated in the Invitation to Bidders.
- b) If a Contract is awarded, Owner will give the Successful Bidder a Notice of Intent to Award within sixty (60) calendar days after the day of the Bid opening.
- c) The party to whom the Contract is awarded will be required to execute the Agreement within ten (10) calendar days from the date when Notice of Intent Award is delivered to the Bidder. The Notice of Intent to Award shall be accompanied by the necessary Agreement and any additional forms. In case the Bidder fails to execute the Agreement, the Owner reserves the right to exercise its option to consider the Bidder in default, in which case, another Bidder will be awarded the project.

- d) Within seven (7) calendar days of receipt of acceptable proof of insurance, W-9, any other required documents, and an Agreement signed by the party to whom the Agreement was awarded, the Owner shall sign the agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may, by Written Notice, withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.
- e) The Owner shall issue the Notice to Proceed within sixty (60) calendar days of the date the Notice of Intent to Award is delivered to Bidder. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Bidder. If the Notice to Proceed has not been issued within the sixty (60) calendar day period or within the period mutually agreed upon, the Bidder may terminate the Agreement without further liability on the party of either party.

4.2. EVALUATION OF BIDS

- a) Owner intends to award a contract to the apparent low bidder for the Bid Schedule included in the Bidding Documents.
- b) Owner reserves the right to reject any and all Bids, to waive any and all irregularities, and to negotiate contract terms with the Successful Bidder, and also reserves the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner.
- c) Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- d) Owner may consider the qualifications and experience of SubBidders, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of SubBidders, Suppliers, and other persons and organizations must be submitted as provided in the Special Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Intent to Award.
- e) Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed SubBidders, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Bidding Documents to Owner's satisfaction within the prescribed time.

4.3. SUBBIDDERS, SUPPLIERS AND OTHERS

- a) The Successful Bidder, shall within ten (10) calendar days after the Notice of Intent to Award, submit to Owner, a list of all such SubBidders, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such SubBidder, Supplier, person or organization if requested by Owner. If Owner or Engineer after due investigation has reasonable objection to any proposed SubBidder, Supplier, other person or

organization, either may request the Successful Bidder to submit an acceptable substitute. The Bidder's Bid Price will be increased (or decreased) by the difference in cost occasioned by such substitution.

- b) In contracts where the Contract Price is on the basis of the Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Intent to Award, shall identify in writing to Owner those portions of the Work that such Bidder proposes to subcontract and after the Notice of Intent to Award may subcontract other portions of the Work only with Owner's written consent.
- c) No Bidder shall be required to employ any SubBidder, Supplier, other person or organization against whom Bidder has reasonable objection.

5. **SIGNING OF AGREEMENT**

5.1. **GENERAL**

- a) When Owner gives a Notice of Intent to Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Bidding Documents attached. Within ten (10) calendar days thereafter, Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required bonds and a current insurance certificate showing the required coverages and endorsements. Failure of the Bidder to sign and return the Agreement shall cause its bid security to be forfeited to Owner and may, at the election of Owner, disqualify its Bid. Within seven (7) calendar days thereafter, Owner shall deliver one (1) fully signed counterpart to Bidder.
- b) The Bidding Documents will be prepared in at least three original sets for signature, one for delivery to the Successful Bidder.

5.2. **PERFORMANCE, PAYMENT BOND AND MAINTENANCE BOND**

- a) The Successful Bidder shall be required to furnish Performance and Payment Bonds in the amount of one hundred percent (100%) of the total contract price from a surety Owner holding a permit from the State to act as surety. The surety must have a U.S. Treasury Department rating sufficient for the bond amounts. If Bidder's proposed surety Owner, agency, or agent does not meet the aforementioned requirements, then the Bidder's Bid and bid security will be returned and the Bidder will not be considered.
- b) The Successful Bidder shall provide three signed originals of each of the Bonds to be bound with Bidding Documents.

BID FORM
Cedar Point Housing Road Improvement Project

TO: Southern Ute Indian Tribe
Tribal Planning Department
116 Memorial Drive
Ignacio, CO 81137

BID SUBMITTED BY:

CONTRACTOR NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
TELEPHONE () _____ FAX () _____

THE UNDERSIGNED BIDDER, having familiarized himself with the work required by the Bidding Documents, the site where the work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the work, including, but not limited to, the TERO Indian Preference in Bidding Procedures (Appendix C), and having satisfied himself of the expense and difficulties attending performance of the work.

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into Agreement in the form attached to perform all work” in strict accordance with the Bidding Documents, within the time set forth therein, and at the prices stated below, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the work; and insurance and submittals; and at Owners option, the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; all as indicated or specified in the Bidding Documents to be performed or furnished by Contractor in accordance with the following Bid prices on the BID SCHEDULE pages.

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

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed.

The foregoing price shall include all labor, materials, transportation, shoring, removal, dewatering, overhead, profit, insurance, etc. to cover the complete Work in place of the several kinds called for.

Bidder acknowledges that the Owner has the right to delete items in the Bid or change quantities at his sole discretion without affecting the Agreement or prices of any item so long as any change does not exceed a thirty percent (30%) decrease or increase of the line item quantities.

Bidder agrees to perform all work described in the Bidding Documents and as itemized in the Bid Schedule for the following price:

Bid Total: _____

The undersigned Bidder agrees to enter into Agreement within ten (10) calendar days after acceptance of this Bid, and further agrees to complete all work covered by the Bid, in accordance with specified requirements.

Receipt of copies of the following addenda is hereby acknowledged.

<u>Addendum No.</u>	<u>Bidder's Signature</u>	<u>Date Acknowledged</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

In submitting this Bid it is understood that Owner reserves the right to reject any and all Bids, and it is understood that this Bid may not be withdrawn during a period of SIXTY (60 days) after the day of the bid opening.

The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

SIGNATURE OF BIDDER

Date: _____

If an Individual: _____

by: _____
(Signature)

Print or type name: _____

Doing business as: _____

If a Partnership: _____

by: _____ (Signature) _____ (Title)

Print or type name: _____

If a Corporation: _____

Print or type Corporation name: _____

by: _____
(Signature)

Print or type name: _____ Title: _____

(S E A L)

Attest: _____

Title: _____

Cedar Point Roads Bid Schedule

	F.P. - 14 ITEM NO.	CDOT ITEM NO.		Unit	Quantity	Unit Price	Total Amount
GENERAL CONDITIONS	15101-0000	626-0000	MOBILIZATION	LS	1		
	63501-0000	630-00016	TRAFFIC CONTROL	LS	1		
	15214-0000	625-0000	CONSTRUCTION SURVEYING	LS	1		
	15301-0010	950	QUALITY CONTROL / TESTING	LS	1		
MOUNTAIN DEW CIRCLE FROM STA 0+00 TO END (29+72)	41401-2000	408-01400	CRACK SEAL	LS	1		
						TOTAL COST:	
RED DAWN CT, GRAY STROKE CT, AND BLUE MOON CT STA 0+00 TO END	41401-2000	408-01400	CRACK SEAL - RED DAWN CT	LS	1		
	41401-2000	408-01400	CRACK SEAL - GARY STROKE CT	LS	1		
	41401-2000	408-01400	CRACK SEAL - BLUE MOON CT	LS	1		
						TOTAL COST:	
ROLLING THUNDER AVE FROM INTERSECTION WITH CO RD 110 TO STA 20+00	63401-0000	627-00011	PAVEMENT MARKING PAINT (WATERBORNE)	GAL	3		
			MILL (FROM STA 0+70 TO STA 8+00)				
	41301-0000	202-00240	MILL/REMOVAL (2-IN)	SY	2430		
	40301-0000	403-02000	ASPHALT OVERALY (2-IN)	TON	265		
			FULL DEPTH REMOVAL (FROM STA 8+00 TO 9+20, INCLUDING PORTION WITH ELK ST)				
	20303-1600	202-00220	ASPHALT REMOVAL	SY	523		
	20303	202-00220	REMOVAL OF BASE (CLASS 6)	SY	523		
	30301-5000	306-01000	RECOMPACTION OF BASE	LS	1		
	30101-0000	304-06000	CLASS 6 (4-IN)	TON	109		
	40301-0000	403-02000	ASPHALT (4-IN)	TON	114		
			CHIP SEAL (FROM STA 9+20 TO 20+00)				
	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100		CHIP SEAL	SY	3602		
60902-0500	609-20000	CURB & GUTTER REPLACEMENT (ALLOWANCE)	LF	500			
61501-0200	608-00000	SIDEWALK REPLACEMNT (ALLOWANCE)	SY	100			
						TOTAL COST:	
ROLLING THUNDER AVE FROM STA 20+00 TO END (STA 38+46)	60405-0000	210-04010	ADJUST MANHOLES	EA	2		
			FULL DEPTH REPLACEMENT (FROM STA 33+67 TO STA 35+68)				
	20303-1600	202-00220	ASPHALT REMOVAL	SY	669		
	20303		REMOVAL OF BASE (CLASS 6)	SY	669		
	30301-5000	306-01000	RECOMPACTION OF BASE	LS	1		
	30101-0000	304-06000	CLASS 6 (4-IN)	TON	139		
	40301-0000	403-02000	ASPHALT (4-IN)	TON	146		
			CHIP SEAL (FROM STA 20+00 TO STA 33+67 AND FROM STA 35+68 TO 37+00)				
	41401-2000	408-01400	CRACK SEAL	LS	1		
40701-0100	409	CHIP SEAL	SY	4991			
						TOTAL COST:	
ELK ST STA 0+00 TO END (8+57)			MILL FROM STA 0+60 TO 7+12				
	41301-0000	202-00220	MILL/REMOVAL (2-IN)	SY	1423		
	40301-0000	403-02000	ASPHALT OVERALY (2-IN)	TON	155		
	60405-0000	210-04010	ADJUST MANHOLES	EA	4		
	60405-0000	210-04050	ADJUST WATER VALVES	EA	1		
			CRACK SEAL FROM STA 7+12 TO 8+57				
	41401-2000	408-01400	CRACK SEAL	LS	1		
			FULL DEPTH REPLACEMENT AT INTERSECTION OF ELK ST AND SAGEBRUSH AVE				
	20303-1600	202-00220	ASPHALT REMOVAL	SY	450		
	20303	304-06000	REMOVAL OF BASE (CLASS 6)	SY	450		
30301-5000	306-01000	RECOMPACTION OF BASE	LS	1			
30101-0000	304-06000	CLASS 6 (4-IN)	TON	94			
40301-0000	403-02000	ASPHALT (4-IN)	TON	98			
						TOTAL COST:	
SHADOW SPIRIT ST STA 0+00 TO END (11+24)	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100		CHIP SEAL	SY	3347		
						TOTAL COST:	
SAGEBRUSH AVE STA 0+00 TO END (16+68)	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100	409	CHIP SEAL	SY	4254		
						TOTAL COST:	
FRY BREAD AVE STA 0+00 TO END (18+06)	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100	409	CHIP SEAL	SY	3800		
						TOTAL COST:	

LODGE POLE WAY STA 0+00 TO END (22+41)	60405-0000	210-04050	ADJUST WATER VALVES	EA	9		
	63401-0000	627-00011	PAVEMENT MARKING PAINT (WATERBORNE)	GAL	5		
			MILL (FROM STA 0+71 TO 13+81)				
	41301-0000	202-00240	MILL/REMOVAL (2-IN)	SY	3493		
	40301-0000	403-02000	ASPHALT OVERALY (2-IN)	TON	380		
			FULL DEPTH REMOVAL (FROM STA 13+81 TO 17+41)				
	20303-1600	202-00220	ASPHALT REMOVAL	SY	960		
	20303	202-00220	REMOVAL OF BASE (CLASS 6)	SY	960		
	30301-5000	306-01000	RECOMPACTION OF BASE	LS	1		
	30101-0000	304-06000	CLASS 6 (4-IN)	TON	199		
	40301-0000	403-02000	ASPHALT (4-IN)	TON	209		
		409	CHIP SEAL (LODGE POLE WAY FROM STA 17+41 TO INTERSECTION WITH ROLLING THUNDER AVE)				
	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100	409	CHIP SEAL	SY	1289		
						TOTAL COST:	
ARROW ST STA 0+00 TO END (17+47)	41401-2000	408-01400	CRACK SEAL	LS	1		
	40701-0100	409	CHIP SEAL	SF	4277		
			ARROW ST FULL DEPTH REPLACEMENT, INTERSECTIONS WITH ROLLING THUNDER AND FRY BREAD AVE				
	20303-1600	202-00220	ASPHALT REMOVAL	SY	1432		
	20303	202-00220	REMOVAL OF BASE (CLASS 6)	SY	1432		
	30301-5000	306-01000	RECOMPACTION OF BASE	LS	1		
	30101-0000	304-06000	CLASS 6 (4-IN)	TON	297		
	40301-0000	403-02000	ASPHALT (4-IN)	TON	312		
	60405-0000	210-04010	ADJUST MANHOLES	EA	3		
	60405-0000	210-04050	ADJUST WATER VALVES	EA	7		
	20303-0300	202-00001	Remove concrete apron	EA	3		
	25101-0000	506-00000	D50 12" RIPRAP	CY	12		
							TOTAL COST:
	BURNING CEDAR AVE STA 0+00 TO END (17+42)	41401-2000	408-01400	CRACK SEAL	LS	1	
40701-0100		409	CHIP SEAL	SY	4581		
							TOTAL COST:

TOTAL OVERALL COST:	
----------------------------	--

BIDDER'S QUALIFICATION STATEMENT
Cedar Point Housing Road Improvement Project

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: Southern Ute Indian Tribe
Tribal Planning Department

ADDRESS: 116 Memorial Drive
Ignacio, CO 81137

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

NAME OF PROJECT (if applicable):

TYPE OF WORK (file separate form for each Classification of Work):

- | | |
|--|---|
| <input type="checkbox"/> General Construction | <input type="checkbox"/> Paving |
| <input type="checkbox"/> Earthwork/Mass Grading | <input type="checkbox"/> Concrete (Curb/Gutter, Flatwork) |
| <input type="checkbox"/> Dry Utilities (Power/Gas/Cable/Fiber) | <input type="checkbox"/> Landscaping |
| <input type="checkbox"/> Wet Utilities (Water/Sewer lines & related) | <input type="checkbox"/> Fencing |
| <input type="checkbox"/> Drainage (storm sewer, culverts & related) | <input type="checkbox"/> Other (describe) |

ORGANIZATION

- 1.1 How many years has your organization been in business as a Contractor?
- 1.2 How many years has your organization been in business under its present business name?
 - 1.2.1 Under what other or former names has your organization operated?
- 1.3 If your organization is a corporation, answer the following:
 - 1.3.1 Date of incorporation:

- 1.3.2 State of incorporation:
- 1.3.3 President's name:
- 1.3.4 Vice-president's name(s):
- 1.3.5 Secretary's name:
- 1.3.6 Treasurer's name:

1.4 If your organization is a partnership, answer the following:

- 1.4.1 Date of organization:
- 1.4.2 Type of partnership (if applicable):
- 1.4.3 Name(s) of general partner(s):

1.5 If your organization is individually owned, answer the following:

- 1.5.1 Date of organization:
- 1.5.2 Name of owner:

1.6 If the form of your organization is other than those listed above, describe it and name the principals:

2. LICENSING

2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

2.2 List jurisdictions in which your organization's partnership or trade name is filed.

3. EXPERIENCE

3.1 List the categories of work that your organization normally performs with its own employees and equipment.

3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

3.2.1 Has your organization ever failed to complete any work awarded to it?

3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

3.2.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer

is yes, please attach details.)

3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

3.4.1 State total worth of work in progress and under contract:

3.5 On a separate sheet, list the major projects your organization has completed in the past five years; giving the name of project; owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own employees and equipment.

3.5.1 State average annual amount of construction work performed during the past five years:

3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

4. REFERENCES

4.1 Trade References:

4.2 Bank References

4.3 Surety:

4.3.1 Name of bonding company:

4.3.2 Name, address and telephone number of agent:

4.3.3 Maximum available bonding capacity as of this date

5. SIGNATURE

5.1 Dated this _____ day of _____

Name of Organization:

By: _____

Title:

5.2

M _____ being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this _____ day of _____

Notary Public: _____

My Commission Expires: _____

**NOTICE OF INTENT TO AWARD
Cedar Point Housing Road Improvement Project**

Date:

TO:

The Owner, having duly considered the Bid submitted on _____ for the work covered by the Bidding Documents titled **Cedar Point Housing Road Improvement Project** in the amount of _____, and it appearing that the Price and other information in your Bid Form is fair, equitable and to the best interest of the Owner, the offer in your Bid Form is hereby accepted.

In accordance with the terms of the Bidding Documents, you are required to execute the Agreement and Performance and Payment Bond in three counterparts within ten (10) calendar days from and including the date of this Notice of Award.

In addition, you are required to furnish at the said time Certificates of Insurance evidencing compliance with the requirements for insurance as stated in the Bidding Documents.

The Bid Security submitted with your Bid will be returned upon execution of the Agreement, furnishing of the required Performance and Payment Bond and Certificates of Insurance within the time limit specified. In the event that you should fail to execute the Agreement and Performance and Payment Bond within the time limit specified, said Security will be retained by the Owner as liquidated damages and not as a penalty for the delay and extra work caused thereby.

Sincerely,
Tribal Planning

ACCEPTANCE OF NOTICE OF INTENT TO AWARD

Receipt of the Notice of Intent to Award is hereby acknowledged on this ____ day of _____, 2022.

By _____

Title _____

Company _____

Please complete and return this form with the Agreement, Certificates of Insurance, bonds, and completed W-9 in one envelope to offices of the Tribal Planning Department within ten (10) calendar days.

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between Southern Ute Indian Tribe Planning Department

(hereinafter called OWNER) and _____, hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

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

Re-pave/mill/crack seal roads within Cedar Point Housing Subdivision. Work includes items listed in Stipulated Price Bid Schedule and further described in the Special Conditions.

ARTICLE 2 - THE PROJECT

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

Cedar Point Housing Road Improvement Project

ARTICLE 3 - ENGINEER

3.01 Engineer is defined as follows:

3.01a ORIGINAL DESIGN ENGINEER OF RECORD (SEH, Inc.), who is the original Project designer. Responsibilities: provide updated design guidance as requested if errors or omissions are identified; provide supplementary design guidance if contracted to do so.

3.01b CONSTRUCTION ADMINISTRATION ENGINEER (SEH, Inc.) Responsibilities: assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Bidding Documents in connection with the completion of the Work in accordance with the Bidding Documents. Also, coordinate with appropriate Authorities having Jurisdiction, including obtaining all necessary reviews, approvals, and acceptances by the respective Authority as may be necessary. Authorities include Southern Ute Indian Tribe, Tribal Utilities, and other utility providers.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

- A. The Contractor will proceed with the work at such a rate or progress to ensure substantial completion on or before October 31, 2022.

It is expressly understood and agreed, by and between the Contractor and the Owner, that time is of the essence and the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work (15 potential delay days for the time specified).

- B. The contractor will proceed with the work at such a rate or progress to ensure final acceptance by the end of the warranty period as specified in #16 of the Supplementary Conditions.

4.02 *Liquidated Damages*

The Contractor acknowledges and agrees that the liquidated damages set forth in the Item #15 of the Supplementary Conditions are a reasonable assessment of the ordinary and general damages and inconvenience that will be incurred by Owner as a consequence of such delay.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Bidding Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A below:

- A. The Contractor agrees to perform all the Work described in the Contract Documents and comply with the terms therein for the sum of _____, as shown in the Bid Schedule. The parties understand that the sum set forth in the Bid Schedule is a maximum price, subject to change orders as set forth herein.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. OWNER shall make Progress Payments in accordance with Item #17 of the Supplementary Conditions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, and as further described in the Supplementary Conditions including written approval from appropriate Authority of final acceptance and the date the specified warranty period has been initiated, OWNER shall pay the remainder of the Contract Price, with the exception of the post-construction stormwater management, as recommended by ENGINEER as provided in said paragraph 14.07.
- B. At the end of the specified Authorities warranty period, after all warranty issues have been addressed and all Authorities involved have completed final inspections and written approvals have been received by Owner, Contractor may request exoneration of Performance Bond.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

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

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

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or

contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - BIDDING DOCUMENTS

8.01 Bidding Documents

A. The Bidding Documents consist of the following:

1) Standard Contract Forms

- i) Instructions to Bidders (Pages 1 to 7, inclusive)
- ii) Bid Form (Pages. 1 to 3, inclusive)
- iii) Bid Schedule- Cedar Point Housing Road Improvement Project (Pages. 1 to 1, inclusive)
- iv) Bidder's Qualification Statement (Pages. 1 to 4, inclusive)
- v) Notice of Intent to Award (Pages. 1 to 1, inclusive)
- vi) Standard Form of Agreement (This document)
- vii) Performance and Payment Bond (Pages. 1 to 2, inclusive)
- viii) Notice to Proceed (Pages. 1 to 1, inclusive)
- ix) Application For Payment (Pages. 1 to 2, inclusive)
- x) Lien Release Forms (Pages. 1 to 1, inclusive)
- xi) Change Order Form (Pages. 1 to 1, inclusive)

2) General Conditions (Pages. 1 to 45, inclusive)

3) Supplementary Conditions (Pages. 1 to 11, inclusive)

4) Special Conditions – (Pages. 1 to 8, inclusive)

5) Project Appendices

- i) Appendix A – Other Contractor Documents
 - (1) Geotechnical Engineering Report
- Appendix B – TERO Bidding Requirements

6) Drawings

- i) Cedar Point Housing Road Plan Improvement Project

7) Standard Specifications (Not attached)

- i) IHS Technical Provisions
- ii) Colorado Department of Transportation Standard Specifications for Road & Bridge Construction

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Written Amendments;
- b. Work Change Directives;
- c. Change Order(s).

B. The documents listed in paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Bidding Documents other than those listed above in this Article 8.

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

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.02 Assignment of Contract

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

9.03 Successors and Assigns

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Bidding Documents.

9.04 Severability

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

9.05 Other Provisions

None

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

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

OWNER:

CONTRACTOR:

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

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

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

PERFORMANCE AND PAYMENT BOND

This indemnity shall not extend to liability arising out of the preparation by the Engineer of the design or specifications for the Owner or the giving of written directions or instruction by the Engineer as may be required by the Bidding Documents, provided the giving of such written instructions or directions is the proximate cause of the injury or damage should it occur.

Whenever Principal shall be, and is declared by Owner to be, in default under the Agreement, the Owner having performed Owner's obligations thereunder, the Owner may avail itself of the provisions of the General Conditions which are incorporated by reference in the Agreement and the Surety shall promptly pay the amounts, if any, due Owner by Principal.

Any suit under this Bond must be instituted before the expiration of one year from the date on which final payment under the Agreement falls due. In the event of a dispute as to the terms and conditions of the Bidding Documents, the prevailing party in any such action shall collect all reasonable costs and expenses incurred in such action, including, but not limited to, reasonable attorney's fees.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the successors and assigns of Owner and to all persons, firms and corporations for all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of Principal's Agreement.

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

Signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

Witness By: _____

(Address)

SURETY: _____

Witness By: _____

(Address)

**NOTICE TO PROCEED
Cedar Point Housing Road Improvement Project**

Date:

TO:

In accordance with the Agreement dated _____, you are hereby authorized to proceed on _____ with the work covered by the Bidding Documents titled:

Cedar Point Housing Road Improvement Project

for the sum of _____.

You are to complete the work by October 31, 2022 as outlined in the Contract Agreement.

You shall notify the Owner/Engineer 72 hours before starting work.

Sincerely,

Tribal Chairman

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the Notice to Proceed is hereby acknowledged on this ____ day of _____, 2022.

By _____

Title _____

Company _____

APPLICATION FOR PAYMENT NO. _____
Cedar Point Housing Road Improvement Project

To: _____ (OWNER)
 From: _____ (CONTRACTOR)
 Contract: _____
 Project: _____
 OWNER's Contract No. _____ ENGINEER's Project No. _____
 For Work accomplished through the date of: _____

1.	Original Contract Price:	\$ _____
2.	Net change by Change Orders and Written Amendments (+ or -):	\$ _____
3.	Current Contract Price (1 plus 2):	\$ _____
4.	Total completed and stored to date:	\$ _____
5.	Retainage (per Agreement):	
	_____% of completed Work: \$ _____	
	_____% of stored material: \$ _____	
	Total Retainage:	\$ _____
6.	Total completed and stored to date less retainage (4 minus 5):	\$ _____
7.	Less previous Application for Payments:	\$ _____
8.	DUE THIS APPLICATION (6 MINUS 7):	\$ _____

Accompanying Documentation:

CONTRACTOR'S Certification:

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

Dated _____ CONTRACTOR
 By:

State of _____
 County of _____
 Subscribed and sworn to before me this _____
 day of _____, _____

 Notary Public
 My Commission expires: _____
 Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____ ENGINEER
 By:

EJCDC No. 1910-8-E (1996 Edition)
 Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specification Institute.

**CONTRACTOR'S AFFIDAVIT AND PARTIAL RELEASE OF LIENS
Cedar Point Housing Road Improvement Project**

OWNER: Southern Ute Indian Tribe

CONTRACTOR: _____

1. Affiant is duly authorized to make this affidavit agreement on behalf of Contractor and is fully and personally cognizant of all facts and matters herein stated.

2. Pursuant to that certain Construction Contract between ("Owner") and Contractor dated _____, materials, services and supplies for use in connection with the CEDAR POINT HOUSING ROAD IMPROVEMENT PROJECT at the property ("Property") located in La Plata County, Colorado.

3. All bills, debts, claims or accounts now due which Contractor has incurred to any person, firm or corporation for work or labor performed for equipment rental, or for materials, specially fabricated materials, services or supplies furnished in connection with work under such Contract thru _____, (which date is the last day covered by the Affidavit and Release and is herein called the "payment date") have been paid, settled or discharged in full or are included in the amount requested in Contractor's current payment application, and no basis exists for affixation of liens against the above-described Property and improvements thereon by virtue of any work performed under such Contract to and including the payment date, except for retainage. Contractor has not received any notice or communication that any subcontractor, material man, laborer or other party has not been fully paid for all labor performed or materials heretofore furnished in connection with work performed under such Contract to and including the payment date, except for retainage.

4. This agreement constitutes a partial release and waiver of all liens to which Contractor may be entitled against the above described Property, all improvements thereon and any fixtures, chattels or other property of Owner, thereon on account of all work performed and all materials furnished under such Contract to and including the payment date.

5. Affiant understands that this affidavit is made for the purpose of inducing Owner to make payments under the Contract and that, in making any such advance. Owner will rely upon the accuracy of the matters stated in this affidavit. Contractor therefore agrees to indemnify and hold Owner and Owner's lender, and their respective successors and assigns, harmless from any loss, cost or expense incurred by virtue of any claims made against them on account of any unpaid bills for labor heretofore performed or for materials, specially fabricated materials, services or other supplies furnished under such Contract to and including the payment date.

EXECUTED THIS _____ day of _____, 20__.

By: _____
Name: _____
Title: _____

CHANGE ORDER
Cedar Point Housing Road Improvement Project

No. _____

Project:

Owner:

Date of issuance:

Effective Date:

Contractor is hereby instructed to proceed with the following changes:

Description:

Purpose of the Change Order:

If a claim that the above change(s) have affected Contract Price or Contract Times, any claim for a Change Order based thereon will involve one or more of the following methods of determining the effect of the change(s).

Method of determining change in Contract Price shall be unit prices as bid.

Estimated increase (decrease) in Contract Price:

Recommended:

Engineer

By: _____
(Authorization signature)

There shall be no change in contract time associated with this change.

Accepted:

Contractor

By: _____
(Authorization signature)

Accepted:

Owner

By: _____
(Authorization signature)

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

[INSERT LOGOS]

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General [seal] Contractors of America

Construction Specifications Institute

[seal]

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

EJCDC No. 1910-8 (1996 Edition)

Cedar Point Housing Road Improvement Project
Standard General Conditions

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February 2022

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

Cedar Point Housing Road Improvement Project
Standard General Conditions

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

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

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

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

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

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32. *PCBs*--Polychlorinated biphenyls.

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

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

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

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

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

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

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

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

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

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

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

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

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

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum

products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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

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

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

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

1.02 Terminology

A. Intent of Certain Terms or Adjectives

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

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

B. *Day*

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

C. *Defective*

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

D. *Furnish, Install, Perform, Provide*

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

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

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

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and
3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

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

2.06 *Preconstruction Conference*

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

2.07 *Initial Acceptance of Schedules*

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

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

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

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

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

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

3.02 *Reference Standards*

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

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

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

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

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

3.04 *Amending and Supplementing Contract Documents*

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

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

3.05 *Reuse of Documents*

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

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

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

4.01 *Availability of Lands*

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

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

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

4.02 *Subsurface and Physical Conditions*

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

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

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except

Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

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

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

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

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

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

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

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

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

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

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

C. *Possible Price and Times Adjustments*

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

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

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

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

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

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

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

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

4.04 *Underground Facilities*

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

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

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

a. reviewing and checking all such information and data,

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

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

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

B. *Not Shown or Indicated*

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

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

4.05 Reference Points

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

or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

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

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

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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

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

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

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

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

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

4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

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

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

5.04 *CONTRACTOR's Liability Insurance*

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

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

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

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

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

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

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

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

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

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

3. include completed operations insurance;

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

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

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

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

5.05 *OWNER's Liability Insurance*

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

5.06 *Property Insurance*

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

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of

them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

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

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

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

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

6. include testing and startup; and

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

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

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

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

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

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

5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary

Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

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

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but

the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

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

6.02 *Labor; Working Hours*

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

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

6.03 *Services, Materials, and Equipment*

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

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

6.04 *Progress Schedule*

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

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

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

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using

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

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

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

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

2. *Substitute Items*

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

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

accepted by ENGINEER from anyone other than CONTRACTOR.

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

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

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in

ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

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

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

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

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in

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

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

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

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

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

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

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

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

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

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

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

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

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

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all

property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or

loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

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

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

D. *Submittal Procedures*

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

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

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

c. all information relative to means, methods, techniques, sequences, and procedures of

construction and safety precautions and programs incident thereto; and

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

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

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

E. *ENGINEER's Review*

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

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

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

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

F. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

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

6.19 *CONTRACTOR's General Warranty and Guarantee*

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

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

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

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

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

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

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for

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

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

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

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

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

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

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

7.02 *Coordination*

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

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

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

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

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of ENGINEER*

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

8.03 *Furnish Data*

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

8.04 *Pay Promptly When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on OWNER's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

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

in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

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

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

9.03 *Project Representative*

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

9.04 *Clarifications and Interpretations*

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

9.05 *Authorized Variations in Work*

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

9.06 *Rejecting Defective Work*

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

9.07 *Shop Drawings, Change Orders and Payments*

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

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

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

9.08 *Determinations for Unit Price Work*

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

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking,

exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

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

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

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

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

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

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be

given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

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

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

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

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

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

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

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

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

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

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

included in the above to the extent authorized by OWNER.

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

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

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

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

the Work or caused by the event giving rise to the Claim.

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

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

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

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

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

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

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

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

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

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

11.02 *Cash Allowances*

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

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

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

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

11.03 *Unit Price Work*

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

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

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

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

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

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

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

12.01 *Change of Contract Price*

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

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

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

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

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

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

1. a mutually acceptable fixed fee; or

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

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

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

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

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

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

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with para-

graphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

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

12.03 *Delays Beyond CONTRACTOR's Control*

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

12.04 *Delays Within CONTRACTOR's Control*

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

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

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

12.06 *Delay Damages*

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

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

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

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections,

tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

13.04 *Uncovering Work*

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

NEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

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

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

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

13.07 *Correction Period*

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

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

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

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

13.08 *Acceptance of Defective Work*

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

13.09 *OWNER May Correct Defective Work*

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

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

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

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments*

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

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

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

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's

review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

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

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

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

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

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

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

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

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

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

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

C. *Payment Becomes Due*

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

D. *Reduction in Payment*

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

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

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

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

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

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

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

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

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

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

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

14.05 *Partial Utilization*

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

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a

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

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

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

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

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

B. *Review of Application and Acceptance*

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

C. *Payment Becomes Due*

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

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

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

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

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

15.02 OWNER May Terminate for Cause

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

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
3. CONTRACTOR's disregard of the authority of ENGINEER; or
4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be

entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

15.03 OWNER May Terminate For Convenience

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

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

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

15.04 *CONTRACTOR May Stop Work or Terminate*

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

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

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

2. Copies of the Documents

Modify Article 2.02 of the General Conditions as follows:

OWNER shall furnish to the CONTRACTOR up to two (2) copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

3. Commencement of Contract Times: Notice to Proceed

Modify Article 2.03 of the General Conditions to read as follows:

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated on the Notice to Proceed. A Notice to Proceed may be given at any time.

4. Preconstruction Meeting.

Supplemental to Section 2.06 of the General Conditions:

Contractor's actual onsite foremen, who will be present each day while crews are working, shall be present at meeting.

5. Authorities Having Jurisdiction/ Governing Codes, Standards, and Specifications

Supplemental to Section 3.02 of the General Conditions:

Contractor shall perform all Work in accordance with the requirements of the Authority having Jurisdiction, including, but not limited to ...

- a. Southern Ute Indian Tribe
- b. Tribal Utilities
- c. Bureau of India Affairs (BIA)
- d. La Plata Electric Association (LPEA)
- e. CenturyLink
- f. All utility providers and/or governmental agencies having jurisdiction thereto and as indicated in the specifications and/or special provisions. For items not specifically listed, revert to the hierarchy stated in the drawing general notes upon approval by the Engineer.

6. Insurance

Amend Sections 5.04 and 5.06 of the General Conditions by adding the following supplemental provisions:

So long as any of the Work remains to be completed, Contractor shall, at Contractor's sole cost and expense, carry and maintain in full force and affect the following insurance coverage (Minimum Insurance Limits are also shown in Appendix E, Certificate of Liability Insurance):

- (a) Workmen's Compensation Insurance in not less than the statutory minimum amount, covering all individuals employed by Contractor upon or about the Site, and employee's legal liability providing not less than \$500,000 Bodily Injury by accident or disease, with a waiver of subrogation endorsement in favor of Owner;

- (b) If applicable with respect to building construction, Builder's Risk Insurance, which shall be provided on an "all risk" completed value non-reporting form with a policy limit equal to one hundred percent (100%) of the insurable replacement cost of the Work (excluding earthquake, land value and soft costs and any materials furnished/installed outside the scope of this Contract [which materials shall be insured by Owner]), and shall cover fire, Broad Form Extended Coverage (including falling objects, windstorm, aircraft, wind, hail, riots and civil commotion, smoke, vandalism, explosion and lightning), Theft and flood/surface waters, and shall provide coverage for materials and equipment stored away from the Site for use on the Site, including coverage for said property in transit to the Site;

- (c) Commercial General Liability Insurance on an occurrence form (including public liability insurance, property damage liability insurance, automobile insurance, contractor's protective insurance, contractual liability insurance, and delete exclusions relative to Collapse, Explosion and Underground Property Damage Hazards) in the following minimum amounts (except for automotive liability coverage) with umbrella or excess coverage of an additional \$1,000,000 per occurrence/aggregate; and Combined Single Limit (Bodily Injury and Property Damage combined) as follows:
 - (i) \$1,000,000 Each Occurrence
 - (ii) \$2,000,000 Aggregate
 - (iii) \$2,000,000 Products/Completed Operations Aggregate

- (d) The form of the commercial general liability policy shall be the ISO form CGO 01 0196 or equivalent; the Owner will be named as additional insureds on ISO form 2026 1185; the separation of insured language will not be modified; and a waiver of subrogation in favor of all Owner parties. The Contractor's

commercial general liability insurance shall be primary with respect to any liability insurance maintained by the Owner.

With respect to Comprehensive Automobile Liability Insurance, bodily injury shall be in the minimum amount of \$1,000,000 Combined Single Limit. Such policies shall be on the standard form written to cover all owned, hired and non-owned automobiles.

Each policy of insurance obtained by Contractor pursuant to the Contract Documents shall provide, by endorsement or otherwise (i) that such policy shall not be canceled, endorsed, altered or reissued to affect a change in coverage for any reason or to any extent whatsoever unless the insurer shall have first given Owner at least thirty (30) days prior written notice thereof; and (ii) that Owner may, but shall not be obligated to, make premium payments to prevent the cancellation, endorsement, alteration or reissuance of such policy and such payments shall be accepted by the insurer to prevent same.

Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Copies of policies and endorsements shall be provided to the Owner upon written request. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.

Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Such policies shall provide, by endorsement or otherwise, that Contractor shall be solely responsible for the payment of all premiums under the policies, and that Owner and the other indemnitied shall have no obligation for the payment thereof, notwithstanding that Owner and the other indemnitied are named as additional insureds under the policy.

If Builder's Risk Insurance is provided, any insured loss or claim of loss shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts, but Work shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute.

The Contractor shall be responsible for any loss within the deductible amount of the policy. If Owner is damaged by the failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all costs properly attributable thereto. The Contractor shall obtain and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made hereunder or until no person or entity other than Owner has an insurable interest in the property required by this insurance provision to be covered, whichever is earlier.

If Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this insurance provision, Owner may, but shall not be obligated to, upon five (5) days' written notice to Contractor, purchase such insurance on behalf of Contractor and shall be entitled to be reimbursed by Contractor upon demand. Owner's failure to receive or demand copies of any policies or endorsements required in this Paragraph 14 shall not be construed as a waiver of the requirements herein.

Notwithstanding anything to the contrary herein contained, in the event that either Owner or Contractor incurs a loss by fire or other casualty, which fire or other casualty shall have been caused in whole or in part by the negligence or acts or omissions of the other party or the other party's agents, contractors, employees or servants, then, to the extent that the party incurring such loss is compensated by the Builder's Risk Insurance Coverage obtained pursuant to this insurance provision or any other property insurance of the Owner or the Contractor applicable to the Work or the Site, that party hereby waives and releases any claim that it might have against the other party and the other party's agents, contractors, servants and employees; and no insurance company or other party shall have any rights against either Owner or Contractor by reason of any fire or casualty damage, either by subrogation or assignment.

Before any Work at the Site is started, CONTRACTOR shall provide OWNER a certificate of insurance and any other evidence of insurance requested by OWNER showing CONTRACTOR has purchased and maintains liability insurance in accordance with the requirements set forth in Article 5 of the General Conditions. The liability insurance purchased and maintained by CONTRACTOR shall name OWNER, and The Southern Ute Indian Tribe Growth Fund.

7. Working Hours

Supplemental to Section 6.02B of the General Conditions:

Regular working hours is defined as Monday – Saturday, 7 am to 7 pm. When practical, Contractor will employ reasonable means and methods to avoid and/or minimize unnecessary impacts on adjacent property Owner's and occupants.

8. Subcontracted Work.

Article 6.06, Concerning Subcontractors, Suppliers, and Others, shall include the following:

Subcontractors performing work equal to or more than 10% of the contract amount must be identified and approved by the Owner.

9. Licensure.

Supplemental to Section 6.07 of General Conditions:

CONTRACTOR shall obtain all licenses required by Laws and Regulations or the Bidding Documents prior to commencing applicable Work.

10. Permits.

Supplemental to Article 6.08 of the General Conditions as follows:

CONTRACTOR shall be responsible for obtaining and following the requirements of the following construction permits and licenses:

- a. Southern Ute Indian Tribe Crossing Permit
- b. Other permits as may be necessary

11. Sales Taxes.

Supplemental to Section 6.10 of the General Conditions:

CONTRACTOR is responsible for any sales or use taxes on supplies, material and equipment used on the Project.

12. Safety and Protection.

Supplemental to Section 6.13 of the General Conditions as follows:

CONTRACTOR, his employees and his SUBCONTRACTORS shall at all times comply with the requirements of OSHA. Contractor shall conduct weekly job site “tail gate” meetings as part of this prevention program. A copy of the “sign-in” sheet for these weekly meetings shall be made available to the OWNER upon request.

13. Replacement of Engineer.

Section 8.02(a) of the General Conditions is hereby amended to read:

In case of termination of the employment of ENGINEER, OWNER shall appoint another engineer in its sole discretion. The status of the newly selected engineer shall be that of the former ENGINEER.

14. Resident Project Representative – Owner.

Section 9.03 of the General Conditions is hereby amended to read:

The Owner has appointed the following individual as the “Project Representative, who shall employed directly by the Owner and not the Engineer:

Doug McDonald – Tribal Planner

Resident Project Representative shall have the authority and duties set forth herein:

Provide quality assurance inspections to verify check Contractor’s quality control program. Provide field coordination services for items under Owner’s responsibility. Services are not intended to reduce or diminish the responsibilities of the Engineer or Contractor as stipulated in the Contract Documents

15. Liquidated Damages

Supplemental to Section 12.06 of the General Conditions:

Owner and Contractor recognize that time is of the essence for completion of the improvements prescribed by this Agreement and that Owner will suffer financial loss if the work is not substantially completed within the contract times specified in the Bidding Documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Owner if the work is not substantially completed or finally completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner in accordance with the following:

\$500 Per Working Day after Substantial Completion deadline as defined in the Standard Form of Agreement Between Owner and Contractor.

\$100 Per Working Day after the end of the Warranty Period (Correction Period)

16. Warranty Period (Correction Period)

Supplemental to Section 13.07 of the General Conditions:

Contractor shall guarantee his work for the specified Authority's warranty period (below) from the date of Notification of Final Acceptance by the Authority having jurisdiction:

- Total project – minimum one (1) year warranty period

At the end of the specified Authorities warranty periods (above), after all warranty issues have been addressed and all Authorities involved have completed final inspections and written approvals have been received by Owner, Contractor may request exoneration of Performance Bond and Final Payment.

17. Progress Payments (Retainage)

Supplemental to Section 14.02 of the General Conditions:

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in paragraphs 6.02.A.1.a and b below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

6.02.A.1.a. 90 percent of Work completed (with the balance being retainage).

6.02.A.1.b. Payments may be made to Contractor for material stored on the project, to be incorporated into the work, as evidenced by certified invoices. Payment shall not exceed 60 percent of the certified invoices (with the balance being retainage). Payment for stockpiled materials will not relieve the Contractor of responsibility for loss or damage to the material. Payment for living plant materials, perishable materials, or materials which will not become an integral part of the finished project will not be made.

2. The total retainage being held (10% of Work completed) shall be released to CONTRACTOR at substantial completion of the project. The performance bond will be released after the warranty period.

18. Final Payment.

Modify Section 14.07.A by adding the following subparagraph 4:

4. CONTRACTOR may submit for release of bond after the Warranty Period (Correction Period) has been satisfied and the specified Authorities have provided written approvals releasing financial guarantees with OWNER and accepting the work from warranty.

Modify Section 14.07.C by adding the following subparagraph 2:

2. Final payment will not be made to CONTRACTOR until OWNER has published a notice of final settlement twice in the local newspaper in accordance with Section 38-26-107, C.R.S. Claims filed with OWNER by any Subcontractor or Supplier on or before the settlement date shall be withheld from the final payment to CONTRACTOR and released in accordance with statutory requirements. No mechanic's lien claim may be filed against the Project by CONTRACTOR or any Subcontractor or Supplier.

19. Dispute Resolution.

Supplemental to Article 16 of the General Conditions:

OWNER and CONTRACTOR agree to mediate any disputes in good faith. In the event that OWNER and CONTRACTOR are unable to resolve a dispute, OWNER and CONTRACTOR have the right seek any remedy available at law or in equity and submit to the jurisdiction of any court of competent jurisdiction in La Plata County, Colorado.

20. Governing Law.

Supplemental to Section 17.05 of the General Conditions:

The laws of the State of Colorado shall govern the Contract Documents.

21. Laws and Regulations.

Supplemental to Section 1.01 (A) (25) of the General Conditions:

OWNER and CONTRACTOR agree that the applicable laws and regulations specifically include (i) United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC; (ii) all laws, regulations and sanctions, state and federal, criminal and civil, that limit the use of and/or seek the forfeiture of proceeds from illegal transaction and limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; that

require identification and documentation of the parties with whom a Financial Institution conducts business; or that are designed to disrupt the flow of funds to terrorist organizations “Anti-Money Laundering Laws,” including regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., the Money Laundering Control Act of 1986 and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Section 1956 and 1957; and (iii) any anti-corruption laws of any applicable jurisdiction including the U.S. Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-1, et seq.

Further, CONTRACTOR represents that it is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. Neither CONTRACTOR, nor to CONTRACTOR’S actual knowledge, any Person (defined below) who owns a direct or indirect interest in CONTRACTOR (collectively, a “Contractor Party”) is now nor shall be at any time during the term of this Agreement an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a “Person”) with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a “U.S. Person”), including a United States Financial Institution as defined in 31 U.S.C. 5312, as periodically amended (“Financial Institution”), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by OFAC (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC) or otherwise. CONTRACTOR represents that, to the best of its knowledge, neither CONTRACTOR nor any Contractor Party (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering or any violation of any Anti-Money Laundering Laws or any violation of any Anti-Corruption Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws or under any Anti-Corruption Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws or any Anti-Corruption Laws. CONTRACTOR agrees to deliver OWNER a written certification of compliance with this Section upon OWNER’S reasonable request. CONTRACTOR hereby agrees to defend, indemnify, and hold harmless OWNER, its officers, members, managers, partners, directors, agents, employees and counsel from and against any and all claims, damages, losses, risks,

liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the representations, warranties and covenants set forth this Section and these indemnity obligations of CONTRACTOR shall survive the termination or expiration of this Agreement.

**SPECIAL CONDITIONS
CEDAR POINT HOUSING ROAD IMPROVEMENT PROJECT**

A. Project Description

The Scope of Work for this phase of work includes, but is not limited to:

1. **Cedar Point Housing Road Improvement Project** and affected/related activities as indicated in the Bidding Documents (see agreement)
2. Roads included in this Special Conditions are **Rolling Thunder Ave, Arrow St, Elk St, Mountain Dew Circle, Blue Moon Ct, Gray Stroke Ct, Red Dawn Ct, Sagebrush Ave, Fry Bread Ave, Burning Cedar Ave, Lodge Pole Way and Shadow Spirit St.**

Cedar Point Housing Road Improvement Project

The project consists of road improvements consisting of re-surfacing, paving and/or crack seal, etc. as shown on the plans and described as follows:

1. Road re-construction and repaving
2. Curb and Gutter repair / replacement
3. Sidewalk repair / replacement
4. Asphalt patching / chip sealing
5. Crack filling and sealing

General

Contractor shall comply with the following documents listed as the **Project Appendices**:

- A. TERO Indian Preference in Bidding Procedures

Contractor shall comply with the following documents listed as the **Standard Specifications**:

- A. Colorado Department of Transportation Standard Specifications for Road & Bridge (CDOT) current edition.
- B. Manual for Uniform Traffic Control Devices for Streets and Highways (MUTCD) current edition.
- C. AAIHS/OEHE Sanitation Facilities Construction Technical Provisions
- D. Modification to Technical Provision Section 5 – Water Service Lines
- E. Occupational Safety and Health Administration (OSHA)

Prior to Construction

Contractor shall provide two (2) weeks notice prior to starting work so that the Southern Ute Indian Tribe can complete a pre-construction photo survey of existing conditions.

During Construction

For the Project, contractor is to stay within road Right-Of Way(s) for roads under construction/re-pair. Contractor shall be responsible for all materials brought on site. Location to stockpile material and equipment shall be approved by Owner's Representative. Owner's Representative must approve location of any storage bin. Contractor shall be responsible for any relocation of bin as might be needed by Owner's Representative. Contractor shall maintain a working set of plans during construction to track progress.

Dewatering shall meet all Federal clean water standards as defined by the authorizing permit agency for construction dewatering, as required.

Water and sewer service locations are shown on the plans and must be verified prior to commencement of work in area of said existing utilities. Manhole lid adjustments and/or concrete tie-in adjustment shall be approved by Engineer.

Project Close out

This site must be cleared of all equipment, material, stockpiles and related debris at the completion of the Project. All disturbed areas are to be returned to their original condition before final payment. Contractor shall supply their own water. Water may be available from existing hydrants. Contractor shall coordinate directly with Tribal Utilities. Contractor shall be responsible for any piping or transport necessary to deliver water to Work areas.

The contractor shall provide as-built or "record drawings" to the Tribe and BIA at the completion of construction.

The contractor will be responsible for completing the work outlined below and warranting their work for the period specified by the authorities having jurisdiction. This includes establishing vegetation to specified requirements within the project manual. It is the contractor's responsibility to provide watering, if necessary, to achieve the specified vegetation requirements. The warranty period shall be extended as necessary until vegetation requirements have been achieved. Performance bond shall not be released until Final Acceptance by authorities with jurisdiction.

B. Method of Measurement and Payment

This section describes the bid line items for the project and shall be used in conjunction with the Bid Schedule to determine the measurement of quantities and the method of payment. The quantities at intersections have been measured at the extended flowline of the street the plans/quantities are shown on. The various bid line items and the items included within them are described more fully as follows:

Mobilization

Description: Includes all labor, materials, and equipment costs to mobilize for the project including, but not limited to, such items as moving equipment, trucks, and personnel both to the site and off of the site upon completion of the work. All expenses for which there are no specific pay items, and as listed in the General Conditions, such as permits, bonds, project coordination, sanitation facilities, materials and quality control testing coordination and submittals, storage of materials, removal and disposal of construction debris and temporary supplies, including power, telephone, and temporary offices necessary for the execution of the work, shall be included in this bid item. The staging area and surrounding disturbed areas are to be returned to their original condition, including reseeded if necessary. Coordination of testing shall be included in this item and shall be the responsibility of the Contractor.

Pay Item: Measurement shall be on a lump sum basis with partial payments made as work progresses. The partial payments shall be as follows:

1. When 5 percent of the original contract amount is earned, 25 percent of the amount bid for mobilization, or 2.5 percent of the original contract amount, whichever is less, will be paid.
2. When 10 percent of the original contract amount is earned, 50 percent of the amount bid for mobilization, or 5 percent of the original contract amount, whichever is less, will be paid.
3. When 25 percent of the original contract amount is earned, 60 percent of the amount bid for mobilization, or 6 percent of the original contract amount, whichever is less, will be paid.
4. When 50 percent of the original contract amount is earned, 100 percent of the amount bid for mobilization, or 10 percent of the original contract amount, whichever is less, will be paid.
5. Upon completion of all work on the project, payment on any amount bid for mobilization in excess of 10 percent of the original contract amount will be paid.
6. The total sum of all payments shall not exceed the original contract amount bid for the item, regardless of the fact that the Contractor may have, for any reason, shut down work on the project or moved equipment away from the project and then back again.

For the purpose of this section the term “original contract amount” as used above shall mean the amount bid for the construction items in the Contract not including the amount bid for mobilization. Payments for materials on hand, will not be included as a percent of original contract amount earned until said materials on hand have been incorporated into the work and accepted and paid for as contract items.

Construction Surveying

Specifications: CDOT Standard Specifications for Road and Bridge Construction, Division 625.

Description: Includes all labor, materials, and equipment costs associated with surveying task as necessary to reinstall the centerline grade, curb and gutter, etc when a full reconstruction is warranted.

Contractor shall include provision of items as necessary to re-establish centerline elevations prior to removal of asphalt.

Pay Item: Payment for surveying shall be on a lump sum basis and shall be paid at the same rate as the mobilization pay item.

Traffic Control

Specifications: CDOT Standard Specifications for Road and Bridge Construction, Division 630, and MUTCD

Description: Includes all labor, materials, and equipment costs associated with all necessary traffic and pedestrian control for construction of the proposed improvements. To include traffic control supervisor, flaggers, barrels, cones, signage, pedestrian routing and traffic control plan.

Contractor shall include provision of items as outlined in the Contractor provided Traffic Control Plan.

Contractor shall coordinate with Owner's Representative regarding road/access closure scheduling.

Traffic control shall meet all Colorado Department of Transportation and the Manual of Uniform Traffic Control Devices requirements latest editions.

Pay Item: Payment for the individual traffic control devices necessary to complete the work shall be full compensation for furnishing, erecting, cleaning, maintaining, resetting, repairing, replacing, moving, removing, and disposing of the construction traffic control devices. All construction traffic control devices that are not permanently incorporated into the project will remain the property of the Contractor.

Construction traffic control devices, as determined by the project Traffic Control Plan (TCP), will be paid for as follows: 50 percent of the accepted amount upon first utilization, an additional 40 percent of the accepted amount when 75 percent of the original contract amount has been earned, and the final 10 percent when the project has been completed and signed off by Engineer and/or Owner's Representative, exclusive of any maintenance periods. The percent of original contract amount earned will be determined by comparing the amount earned for bid items, other than traffic control devices and mobilization, with the original contract amount minus the amounts bid for traffic control devices and mobilization.

Quality Control/Testing

Specifications: CDOT Standard Specifications for Road and Bridge Construction Section 106.

Description: Includes all labor, materials, and equipment costs associated with materials testing and control, and coordination thereof, for construction of the proposed project. Selection and payment of a firm for quality control testing shall be the responsibility of the Contractor. The Contractor shall be responsible for adequately scheduling inspections and testing of all facilities constructed under the Contract. All testing shall conform to the regulatory agency's standard specifications.

Contractor shall be responsible for adhering to the requirements set forth in the Contractor Quality Control Inspection document attached in the Project Appendices

The Contractor shall be responsible for and shall pay all costs in connection with testing for the following:

- All required geotechnical testing.
- All performance and field testing specifically called for by the Specifications listed above.
- Tests not called for by the specifications of materials delivered to the site but deemed necessary by the Owner's Representative.
- Concrete tests except those for concrete mix design.
- All retesting for Work or materials found defective or unsatisfactory.
- All minimum call out charges or stand-by time charges from the tester due to the contractor's failure to pave, pour, or fill on schedule for any reason except by action of the Owner's Representative.
- The Contractor shall notify the testing company forty-eight (48) hours prior to performing an operation that would require testing.

Pay Item: Measurement shall be on a lump sum basis. Payment shall be based on the percentage completion of the entire job as determined by the total amount paid to date for all line items excluding items 1 through 7 divided by the total contract amount including change orders excluding items 1 through 7

Sidewalk Replacement (allowance)

Specifications: CDOT Standard Specification for Road and Bridge Construction, Section 608.

Description: Includes all labor, materials, and equipment costs associated with the installation of concrete for sidewalks, curb ramps and concrete pans, per the construction drawings. Work shall include the cost of material, loading, hauling, placing, compacting, forming and hand finishing of the required concrete for sidewalks, curb ramps and pans.

Pay Item: Measurement for concrete shall be in square yards of finished surface. Payment shall be based upon contract unit price. All work necessary and incidental to the construction of sidewalks, curb and ramps, and pans will not be measured and paid for separately but shall be included in the work.

Curb and Gutter Replacement (allowance)

Specifications: CDOT Standard Specification for Road and Bridge Construction, Section 609.

Description: Includes all labor, materials, and equipment costs associated with the installation of Type 2 Cast-In-Place Concrete Curb, per the construction drawings. Work shall include the cost of material, loading, hauling, placing, compacting, forming, and hand finishing of the required curb and gutter.

Pay Item: Curb will be measured by linear foot along the front face of the section at the finished grade elevation. Gutter will be measured along centerline of the gutter. Curb and gutter will be measured along the face of the curb. Deduction in length will be made for drainage structures, such as catch basins, drop inlets, etc., installed in the curb, gutter, or curb and gutter.

3/4-inch Minus Aggregate Base Course (CDOT Class 6)

Specifications: CDOT Standard Specification for Road and Bridge Construction, Section 300

Description: Includes all labor, materials, and equipment costs associated with the installation of 3/4-inch minus aggregate base course (ABC), per the construction drawings. Work shall include the cost of material, loading, hauling, placing, compacting, and fine grading of the required ABC.

Pay Item: Measurement for Class 6 shall be in tons hauled, placed and compacted to specification and to elevations shown in plans. Payment shall be based upon total Class 6 placed, and interim payments, if applicable, shall be based on a percentage of total quantities placed as determined by Project Engineer. Contractor shall grade stake the Class 6 at 25-foot intervals along centerline and hinge point to ensure subgrade elevation has been achieved.

Asphalt (HMA)

Specifications: CDOT Standard Specification for Road and Bridge Construction, Section 400

Description: Includes all labor, materials, and equipment costs associated with the installation of Hot Mix Asphalt (HMA), per the construction drawings to the thickness shown. Work shall include the cost of material, loading, hauling, placing, and compacting of the required HMA.

Pay Item: Measurement shall be in tons, based on plan quantities. Payment shall be made based on the percent of total quantities placed and compacted, to be confirmed by weight tickets. The project engineer can request the contractor provide a verification of finished grade to verify quantities if there is a discrepancy between plan quantity and final quantity. Finished grade survey points shall be at 25-foot interval along centerline and edge of oil.

Crack Filling and Sealing Sealant

Specifications: CDOT Standard Specification for Road and Bridge Construction, Section 408

Description:

All cracks wider than ¼” shall be filled and sealed. Crack sealer product must meet **ASTM D6690 Type II** specifications.

Crack sealer must be applied according to the manufacturer’s recommended instructions, including but not limited to:

- Cracks to be blown out with oil-free compressed air
- Meeting ambient air temperature range
- Meeting pavement moisture requirements
- The use of heat lance
- Routing of cracks is not required
- Double-jacket burner is not required

Pay Item: Measurement for sealant shall be in lump sum per road. Payment shall be based upon completion of work.

Chip Seal

Specifications: CDOT Standard Specification for Road and Bridge Construction Section 409.

Description: The work shall be performed in accordance with the specification referenced above and shall consist of a chip seal placed **at the following rates**. The total application rate of the chip seal shall be approximately .75 gal/yd of emulsified asphalt and 55 lbs/yd of type II covercoat (1/2 Inch) aggregate, or 0.375 gal/yd of emulsified asphalt and 27.5 lbs/yd of type II covercoat aggregate. Construction sequencing shall allow for the lift to be placed and subsequently opened to traffic until the first lift has been placed on all subdivision roads and is allowed to set under traffic for a minimum of one week..

Pay Item: Measurement for chip seal shall be in square yards placed to specification and to elevations shown in plans. Payment shall be based upon total sealant used, and interim payments, if applicable, shall be based on a percentage of total quantities placed as determined by Engineer/Owner. Contractor shall keep weight tickets to certify material tonnage, as necessary.

Sewer and/or Water Manhole Adjustment

Specifications: CDOT Standard Specifications for Road and Bridge Construction, Section 200

Description: Includes all labor, materials, and equipment costs associated with the adjusting of structures. Construction operations shall consist of raising, lowering, moving, or removing masonry or concrete; adding concrete; and resetting grates, frames or rings and covers to fit the new construction. Structures in the traveled roadway shall be adjusted to a tolerance of ¼ to ½-inch below the surface of the roadway.

Manholes are to be accessible at all times. Manholes and piping shall be kept clear of dirt and debris and will be the complete responsibility of the Contractor until sign off by authorized authority. Existing sewer shall be protected from contamination of any kind.

Pay Item: Measurement shall be on an each basis, based on plan quantities. Payment shall be made based on the number of manholes installed.

Pavement Marking Paint (Waterborne)

Specifications: CDOT Standard Specification for Road and Bridge Construction Section 627.

Description: Includes all labor, materials, and equipment costs associated with the installation of striping per the construction plans and Manual on Uniform Traffic Control Devices. Work shall include the cost of materials, loading, and hauling.

Included under this item are roadway striping, stop bar, and curb painting, as required.

Pay Item: Measurement shall be on a gallon basis. Payment shall be made based on completion of project.

Remove Concrete Apron

Specifications: CDOT Standard Specification for Road and Bridge Construction Section 200.

Description: Includes all labor, materials, and equipment costs associated with the removal of the existing concrete drainage aprons along Arrow St. Work shall include materials, loading, hauling, setting lines and grades, excavation, legal disposal of excavated material, watering or dewatering.

Pay Item: Measurement shall be on an each basis, based on plan quantities. Payment shall be made based on the percent of total quantities completed (not to exceed 100% of plan quantities).

Rip Rap

Specifications: CDOT Standard Specification for Road and Bridge Construction Section 506.

Description: Includes all labor, materials, and equipment costs associated with the installation of well graded rip rap per the construction drawings. Work shall include materials, loading, hauling, setting lines and grades, excavation, legal disposal of excavated material, watering or dewatering, placement and compaction of geotextile fabric and/or bedding material, and placement of the rip rap. The cost of any underlying geotextile fabric or bedding material shall be included in this item.

Pay Item: Measurement shall be in cubic yards, based on plan quantities. Payment shall be made based on the percent of total quantities installed (not to exceed 100% of plan quantities).

Subgrade Stabilization

Specifications: As outlined in the description

Description: Where yielding subgrade soils are encountered the Engineer shall be contacted and the areas to be stabilized are to be as designated by the Engineer. This pay item shall include all of the work and materials required as follows per the Geotech Report:

Over-excavate these soft areas by 12 to 18 inches, lightly proof compact the exposed soil. Thin layer of aggregate base course may then be placed (typically 6 inches or less). If needed a woven geotextile, such as Mirafi rs280i, can be placed on top of the first layer of aggregate base course followed by placement and compaction of the overlying fill material.

Pay Item: Measurement and payment shall be on square yard basis.

Mill/Removal

Specifications: Per Construction Drawings.

Description: Includes all labor, material, and equipment associated with the pulverization/milling of existing asphalt to the depth as shown on the drawings. Work shall include milling/pulverization, reworking and re-compaction of the asphalt.

Pay Item: Measurement and payment shall be on square yard basis.