



City of Woodland Park

City Council

June 27, 2024 at 6:30 PM

AGENDA

Immediately following the Regularly Scheduled Council Meeting - **Executive Session: Executive Session for discussion of a personnel matter under C.R.S. Section 24-6- 402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Evaluation with the City Manager.**

1. **CALL TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **CEREMONIES, PRESENTATIONS AND APPOINTMENTS**
 - A. Recognition of a proclamation by the City of Woodland Park declaring June 27, 2024, as Vahsholtz Family Day.
(Presenter Mayor Case)
 - B. Appointments to the Downtown Development Authority (DDA).
(Presenter Deputy City Manager/City Clerk Leclercq)
 - C. Appointment to the Keep Woodland Park Beautiful Committee.
(Presenter Deputy City Manager/City Clerk Leclercq)
 - D. Appointment of an alternate position for PPACG.
(Presenter Mayor Case)
 - E. Discussion of Signature Event designation and allocation.
(Presenter Mayor Case)
 - F. Presentation and update on the upcoming Keep Woodland Park Beautiful Clean-up.
(Presenter Communications and Marketing Coordinator Higginbotham)
4. **ADDITIONS, DELETIONS OR CORRECTIONS TO AGENDA**
5. **CONSENT CALENDAR**
 - A. Approval of the regularly scheduled City Council meeting minutes for June 6, 2024.
(Presenter Deputy City Manager/City Clerk Leclercq)
6. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA (1)**
7. **UNFINISHED BUSINESS**
(Public Comment may be heard)

8. ORDINANCES ON INITIAL POSTING

(Public comment may be heard)

- A. Consider Ordinance No. 1476, Series 2024 on initial posting, an Ordinance of the City Council of Woodland Park, Colorado, Adopting by Reference the 2024 Edition of the Model Traffic Code; Providing Penalties for the Violations Thereof; and Making Conforming Amendments to the Woodland Park Municipal Code; Repealing all Ordinances in Conflict Therewith; and Providing Penalties for Violation Thereof and Adding Chapter 10.14 Traffic Regulations to the Woodland Park Municipal Code and set the Public Hearing for July 18, 2024. (L)
(Presenter City Attorney Williams)
- B. Consider Ordinance No. 1477, Series 2024, an Ordinance of the City Council for the City of Woodland Park, Colorado Amending Title 5 of the Woodland Park Municipal Code, Regarding Wireless Communication Facility Regulations, to Establish Regulations for Wireless Communication Facilities. (A)
(City Attorney Williams)

9. PUBLIC HEARINGS

(Public comment may be heard)

10. NEW BUSINESS

(Public comment may be heard)

- A. Agreement Between Baseline Engineering Corporation and the City of Woodland Park for Professional Engineering and Survey Services for Fairview Street Design in the amount of \$159,852 (Presenter Ben Schmitt, Director of Public Works)
- B. Agreement between RME Ltd, LLL dba Elite Surface Infrastructure and the City for Woodland Park in the amount of \$3,577,953 for Infrastructure improvements on Lake Avenue, Dewell Road, and Pine Ridge. (Presenter Ben Schmitt, Director of Public Works)
- C. Agreement between the City of Woodland Park and Cosco Fire Protection for the amount of \$645,113 for HVAC and Fire Suppression Ute Pass Cultural Center (Presenter Ben Schmitt, Public Works Director)

11. REPORTS

(Public comment not necessary)

- A. Mayor's Report
- B. Council Reports
- C. City Attorney's Report
- D. City Manager's Report
 - 1. Sales Tax update for April 2024.

12.

- A. ***Motion to move into Executive Session: Executive Session for discussion of a personnel matter under C.R.S. Section 24-6- 402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; AND THE FOLLOWING ADDITIONAL***

DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Evaluation with the City Manager.

Key to agenda abbreviations:

(A) Administrative- matters involving day-to-day decisions such as approving contracts, hiring staff and the procurement of goods and services. Administrative actions generally do not require formal actions by the elected body.

(L)Legislative- typically in the policy arena; legislative matters affect large areas and large groups of people, such as enacting dog regulations or amending the City code. Legislative action generally involves motions, resolutions and ordinances.

(QJ)Quasi-Judicial- apply general rules to a specific interest, such as zoning change affecting a single piece of property, or a special use permit. Quasi-Judicial actions generally involve adjudication, sometimes in writing, but not a resolution or ordinance. Decision for Quasi-Judicial proceedings are made exclusively based upon the testimony presented on the record. Ex-parte communication (communication outside the official hearing) between elected officials and citizens is not permitted on Quasi-Judicial



STAFF REPORT

TO: Mayor Case and City Council

FROM:

DATE: June 27, 2024

SUBJECT: Appointments to the Downtown Development Authority (DDA).
(Presenter Deputy City Manager/City Clerk Leclercq)

BACKGROUND: The City Clerk's Office ran the following ad: There are currently three terms that will become vacant as of June 30, 2024. Interested applicants must either reside, be a business lessee, or own real property in the Downtown Development District in the City of Woodland Park. In addition, an officer or director of a corporation having its place of business in the District is also eligible to serve on this Board. Applicants must be available for meetings when called, and usually in the morning. The terms of these offices will expire on June 30, 2028.

Application forms are available on the City's website www.city-woodlandpark.org or at the City Clerk's office in City Hall, 220 West South Avenue in Woodland Park. Completed applications are submitted to the City Clerk's office not later than noon on June 20, 2024. Applications may be personally delivered to the City Clerk's office at City Hall; delivered by FAX at 719-687-5232; or delivered by mail to the City Clerk at PO Box 9007, Woodland Park, CO 80866.

Please contact Suzanne Leclercq MMC, City Clerk office at 687-5295 with any questions.

The City Clerk received three applications from incumbents Jon Gelmelke, Eric Cabrera and Jerry Good. All three applicants will be invited to attend the City Council to answer any questions the Council may have.

RECOMMENDATION:

ATTACHMENTS: None



STAFF REPORT

TO: Mayor Case and City Council

FROM:

DATE: June 27, 2024

SUBJECT: Appointment to the Keep Woodland Park Beautiful Committee.
(Presenter Deputy City Manager/City Clerk Leclercq)

BACKGROUND: There are currently openings on the Keep Woodland Park Beautiful Committee. The City Clerk received an application from Leah Watters interested in being on this committee.

RECOMMENDATION:

ATTACHMENTS: None



City of Woodland Park

June 6, 2024 at 6:30 PM

MINUTES

1. CALL TO ORDER AND ROLL CALL

Following a work session on Quasi-Judicial matters presented by City Attorney Williams, Mayor Case called the meeting to order.

The following Councilmembers were in attendance: Mayor Case, Mayor Pro-tem Nakai, Councilmember Baldwin, Councilmember Geer, Councilmember Harvey, Councilmember Jones and Councilmember Smith.

The following Staff members were in attendance: City Manager Vassalotti, Deputy City Manager/City Clerk Leclercq, Police Chief Deisler, Public Works Director Schmitt, Planning Director Schminke, IT Technician Barnes and City Attorney Williams.

2. PLEDGE OF ALLEGIANCE

3. CEREMONIES, PRESENTATIONS AND APPOINTMENTS

- A. Oath of Office to new Police Officer.
(Presenter Chief of Police Deisler)

Chief of Police Deisler administered the Oath of Office to new Police Officer Carlos Sermenio.

- B. Pikes Peak Regional Building Department (PPRBD) Update by Roger Lovell,
Chief Building Official

Pikes Peak Regional Department Chief Building Official, Roger Lovell, shared a presentation on Pikes Regional Department with the Council.

- C. Discussion of Military Liaison position. (A)
(Presenter Deputy City Manager/City Clerk Leclercq)

Mayor Case and Councilmember Harvey discussed the position of Military Liaison for Councilmember Harvey. It was agreed that Councilmember Harvey would work at formalizing the duties of this position to include rules of engagement.

4. ADDITIONS, DELETIONS OR CORRECTIONS TO AGENDA

5. CONSENT CALENDAR

- A. Approval of Contract Between Olgoonik Enterprises, LLC and the City of
Woodland Park for \$1,423,097.
(Public Works Director, Ben Schmitt)

This item was moved to item 10 A. on the agenda where the following motion was made. Public Works Director Schmitt shared a brief description of the details of the contract with the Council.

Motion: to approve a contract between Olgonick Enterprises, LLC and the City of Woodland Park for \$1,423,097.00. Nakai/Smith. Motion carried 7-0.

- B.** Approval of the City Council Minutes from the May 16, 2024, regularly scheduled City Council Meeting. (A)
(Presenter Deputy City Manager/City Clerk Leclercq)

Mayor Case introduced this item on the Consent Agenda and the following motion was made.

Motion: to approve the City Council Minutes from the May 16, 2024, regularly scheduled City Council Meeting. Harvey/Geer. Motion carried 7-0.

6. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA (1)

The following individuals spoke on items not on the Council agenda:

- Austin Clark spoke regarding the breaking of large trucks through the city limits and the possibility of the Council creating an ordinance against that.
- Mike Demuth spoke in support of the 1.09% school tax and hiring a third party to administer it. Demuth also brought up the issue of the crosswalk at Kellys Road and Cottontail and the safety of the children that use it.
- Arnie Sparnins congratulated and welcomed the new Councilmembers and asked the Council to support the Citizens Initiative. He shared that he was looking forward to seeing the Council enforce the new ordinance.
- Rachel Priest shared a sense of relief that the Council will not be removing the 1.09% sales tax and is in disagreement with third party administering the sales tax.
- Aaron Helstrom shared that the 1.09% Sales Tax needs to be removed from the July 18 agenda and that it is divisive.
- Randy Clegg shared information on readings that he had been taking of the 5g towers.
- Kitten Walker shared that she emailed the Council and some of them did not respond. Walker also shared that if a 3rd party is hired to administer the school district tax, the City should pay for it.
- Jerry Penland talked about the zoning laws and the future build out maximum of 13,600 residents.
- Gail Gerig shared that she attended the most recent school board meeting and was disappointed in the lack of transparency in the 2024-2025 proposed budget.
- Sean Pekron thanked the council for their thoughtfulness in not rescinding the school sales tax

7. UNFINISHED BUSINESS

(Public Comment may be heard)

None.

8. ORDINANCES ON INITIAL POSTING

(Public comment may be heard)

None.

9. PUBLIC HEARINGS

(Public comment may be heard)

- A.** A Request by Lowell Ross to Consider Ordinance No. 1475, Series 2024, an Ordinance Amending the Local Historic Landmark Designation of the El Dorado Casino (A.K.A. Pre-School in the Pines Property) Located at 312 N. West

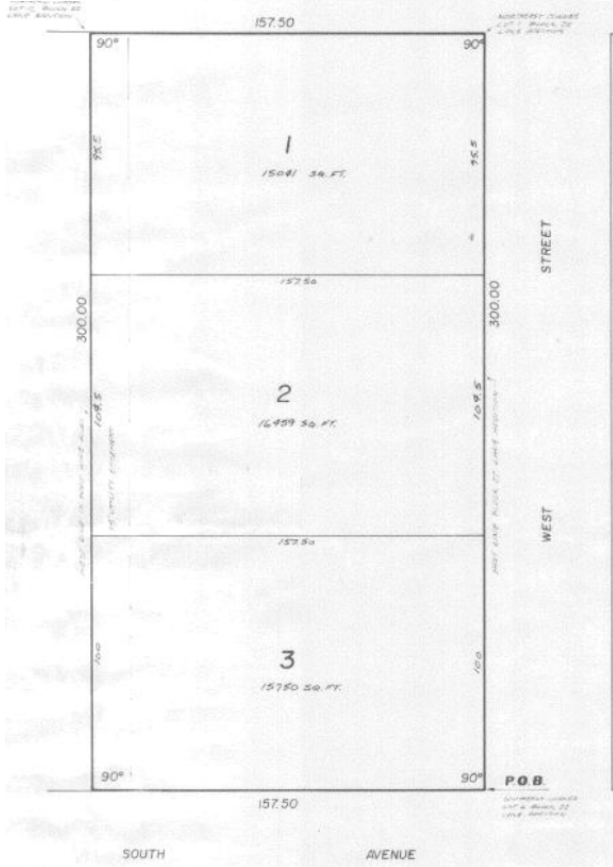
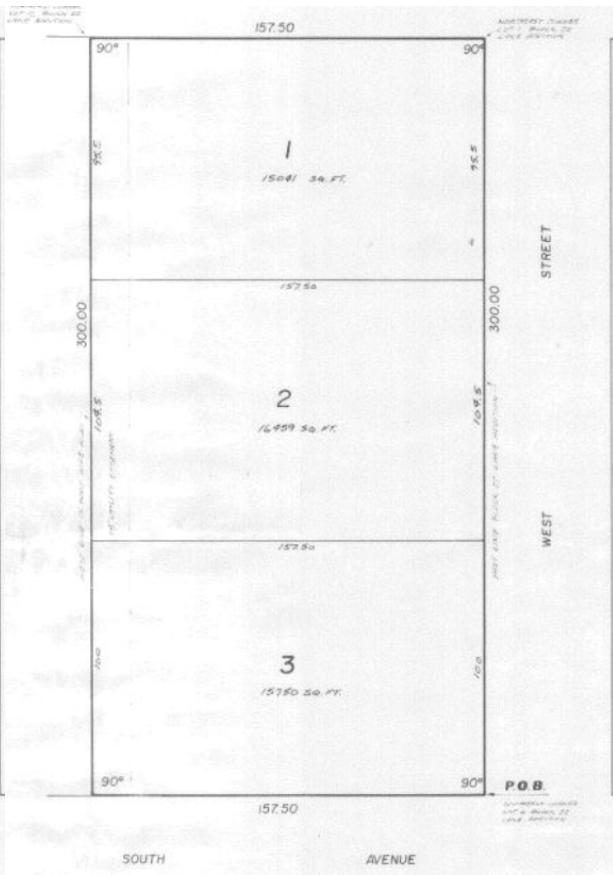
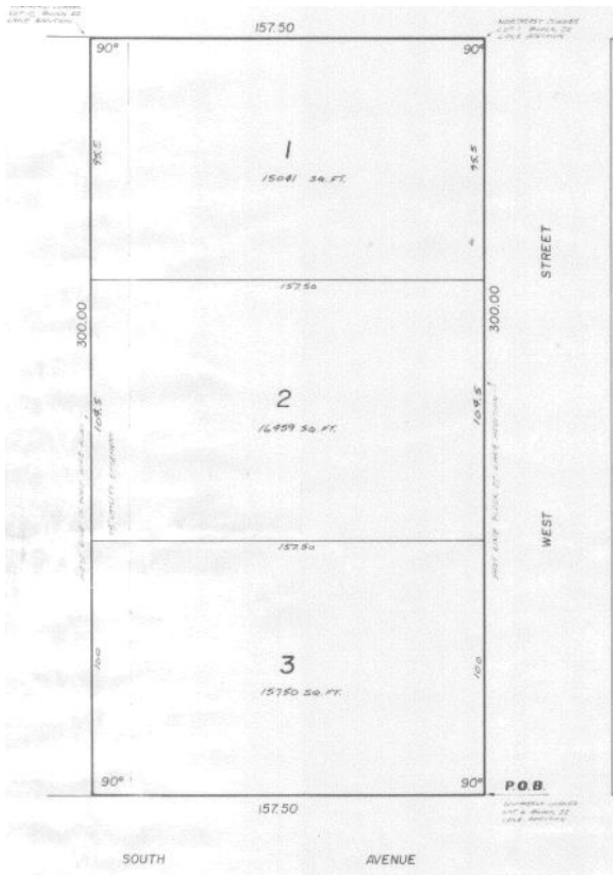
Street, as Requested by the Property Owner, Aime Ventures, LLC. (QJ)
(Presenter, Planning Director Karen Schminke, AICP)

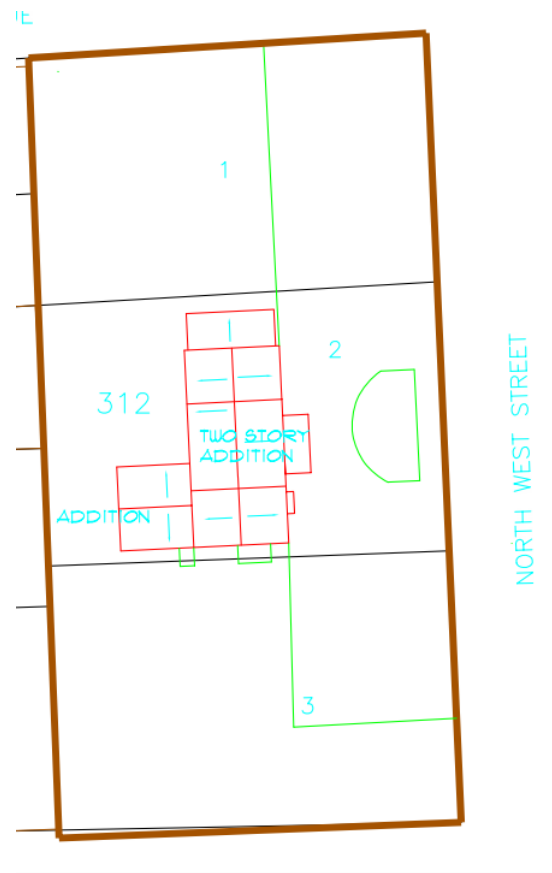
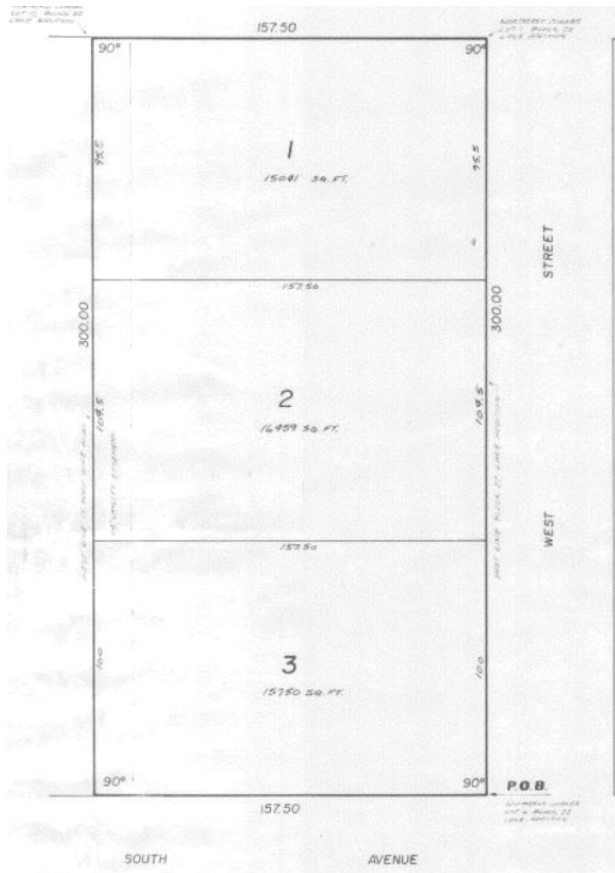
Planning Director Schminke presented her staff report sharing the following information: On April 4, 2018, the owners of the Pre-School in the Pines, Brian and Lisa Osborn, nominated their property for consideration of a Local Historic Landmark designation. The request was approved by City Council in 2018 by Ordinance No. 1328, Series 2018. The historical name for the building on lot 2 is The El Dorado Casino and it is considered significant for its importance in the growing commerce found in Woodland Park in the 1930s.

As was noted in the staff reports associated with approving the local historic designation, the building's architectural and historical integrity has changed significantly over time. This building's level of integrity, relative to the seven aspects of integrity as defined by the National Park Service and the Colorado Historical Society (setting, location, design, materials, workmanship, feeling, and association) has been significantly diminished due to many additions on the building. Especially, the addition on the second floor and the removal of the historic windows and doors had compromised its original design. The workmanship, feeling, design, and materials have been changed extensively through the years. The building no longer has significant integrity to convey the significance of a National, State or local level. However, the building is significant for its rustic style and character. The character defining features include the buttressing effect at the corners, log construction, large stone fireplace, and small divided lite windows. (See Architectural Inventory Form OAHP 1403, Resource Number 5TL.3463)

Current Request: Figure 2 below is a snap shot of the subdivision plat for the subject property (El Dorado Subdivision Lots 1-3). The subject property is comprised of three individual lots and the El Dorado building is located on the center lot (Lot 2) and the lots on either side (Lot 1 and Lot 3) are vacant land. In 2018 Ordinance 1328 was approved and all three lots (Lots 1-3) are included in the legal description of the property associated with this historical designation.

Figure 2:
El Dorado
Subdivisio
n lots 1-3





In 2022 the owner of the subject property obtained permission to change the use of the building on Lot 2 from the pre-school and to instead use it as a residence, just as it had previously been in the 1970's. The owner is now requesting the historical designation be removed from lots 1 and 3. Per the project narrative included in the application, the property owner's intent is to maintain the historic character and quality of this original log building on Lot 2, and to construct a residential duplex building on Lot 1 and on Lot 3. The project narrative also notes the owner's intent to keep the quality of the neighborhood intact and that each new building will have architectural detailing and materials sensitive to the historic nature and scale of the existing historical building.

Criteria: In accordance with Resolution No. 602, Series 2003, the Historical Preservation Committee shall evaluate a nomination in regards to the following criteria for a Local Landmark Designation:

1. The structure should be at least fifty years old.
2. The property is historically significant through one or more of its:
 1. architectural design;
 2. association with an historical event, period or person;
 3. physical impact and location within the City of Woodland Park; and
 4. potential to provide important information concerning the history of Woodland Park.

3. The structure should have sufficient original or accurately restored materials that maintain its original historic character.

With the adoption of Ordinance 1328, which granted historic landmark designation to the subject property, the following findings were made:

Findings in 2018:

1. The Pre-school in the Pines building is more than 50 years old, having been built in 1932.
2. The property as described in this Staff Report and by the attached Architectural Inventory Form OAHP 1403, Resource Number 5TL.3453 is historically significant for its location on N. West St., for the growth of commerce in Woodland Park, and due to the property and persons associated with its ownership.
3. Although the architectural integrity has changed substantially over time it is still significant on a local level for its rustic style and character.

Using the above criteria for a Local Landmark Designation staff has made the following findings for this amendment request:

1. Lots 1 and 3 are vacant land with no structures present.
2. The attached Architectural Inventory Form OAHP 1403, Resource Number 5TL.3453 does not specify any significance for either of the individual vacant lots.
3. There are no structures present so this criteria is not applicable.

Staff has also made the following additional finding:

1. The original Findings from 2018 still apply to the El Dorado Casino building located on Lot 2, El Dorado Subdivision (312 N. West Street).

Historic Preservation Committee (HPC) Recommendation: The HPC held a public hearing on May 7, 2024, and based on the findings stated above, voted unanimously to recommend City Council remove the historic landmark designation from Lots 1 and 3, El Dorado Subdivision, but with the condition that Historic Landmark Designation for the El Dorado Casino on Lot 2, El Dorado Subdivision (312 N. West Street) is retained.

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Following Schminke's presentation and brief questions from the City Council, Mayor Case opened up the public comment portion of the public hearing. There being no public comment Mayor Case closed the public comment and the public hearing and the following motion was made.

Motion: to approve a request by Lowell Ross to consider Ordinance No. 1475, Series 2024, an Ordinance Amending the Local Historic Landmark Designation of the El Dorado Casion located at 312 N West Street, as requested by the Property Owner, Aime Venutes, LLC. Geer/Jones motion carried 7-0.

- B.** Approval of Symphony Above the Clouds Special Event Liquor License for Memorial Park on July 4, 2024. (QJ)
(Presenter Deputy City Manager City Clerk Leclercq)

Deputy City Manager/City Clerk Leclercq shared with the Council the details of the event for the Symphony Above the Clouds, Special Event Liquor License for Memorial Park on July 4, 2024. Mayor Case recused herself from this hearing as she is a presiding officer of this group.

The following motion was made.

Motion: to approve the Symphony Above the Clouds Special Event Liquor License for Memorial Park on July 4, 2024. Geer/Baldwin. Motion carried 6-0 with Case recusing.

10. NEW BUSINESS

(Public comment may be heard)

11. REPORTS

(Public comment not necessary)

A. Mayor's Report

Mayor Case shared the upcoming events for the next two weeks.

B. Council Reports

Mayor Pro-tem Nakai shared that she attended a meeting with a lobbying group from Monument and Fountain and would like for the City to consider joining their group.

Councilmember Bdwin shared an update from the CML quarterly meeting attended in Monument. Baldwin also shared that she felt the Council retreat was productive and shared that the PRIDE event in the park was well organized and well attended.

Councilmember Geer shared an update on the Parks and Recreation programs and also shared how much he enjoyed the PRIDE event and looks forward to attending next year.

Councilmember Harvey asked that the City Manager brief Council in the near future regarding the National Survey.

Councilmember Jones shared an update on the DDA.

Councilmember Smith shared that he also enjoyed attending the PRIDE event.

C. City Attorney's Report

None.

D. City Manager's Report - 1. Update on fees from TDS - Leclercq

Deputy City Manager Leclercq shared an update on a fee increase from TDS. Leclercq also reviewed with Council the upcoming Council dates. Leclercq also shared the posting requirements of a Council Retreat with Council and shared that the June 3rd Council Retreat met all of the legal posting requirements. City Attorney Williams confirmed this was accurate.

Public Works Director Schmitt shared an update on the fuel spill and construction work on Highway 67.

12. ADJOURNMENT

There being no further City Business, Mayor Case announced that the City Council would be moving into an Executive Session and the following motion was made.

Motion: to move into Executive Session pursuant to C.R.S. 24-6-402(4)(b), a conference with attorneys for the purpose of receiving legal advice on specific legal questions, and pursuant to C.R.S. 24-6-402(4)(e), for the purpose of determining positions relative to matters that may be subject to negotiation, developing strategy for negotiations and /or instructing negotiators, relating to the lawsuit brought by the Teller County Short -term Rental Alliance against the City currently in the United States District Court for the District of Colorado, and negotiations and legal advice surrounding the same. Nakai/Geer. Motion carried 7-0.

The Executive Session was called to order at 8:40 P.M. with the following individuals present: Mayor Case, Mayor Pro-tem Nakai, Councilmember Baldwin, Councilmember Geer, Councilmember Harvey, Councilmember Jones, Councilmember Smith, City Attorney Williams, City Manager Vassalotti, Deputy City Manager/City Clerk Leclercq and City Attorney Drew Ringle who appeared via zoom.

The Executive Session concluded at 9:40 P.M. and Mayor Case adjourned the Public Meeting at 9:41 P.M.

Respectfully submitted:

Suzanne Leclercq MMC, City Clerk

APPROVED THIS ____ DAY OF _____, 2024

Kellie Case, Mayor

CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1476
(Series of 2024)

**AN ORDINANCE OF THE CITY COUNCIL OF WOODLAND PARK, COLORADO,
ADOPTING BY REFERENCE THE 2024 EDITION OF THE MODEL TRAFFIC
CODE; PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF; AND
MAKING CONFORMING AMENDMENTS TO THE WOODLAND PARK
MUNICIPAL CODE; REPEALING ALL ORDINANCES IN CONFLICT
THEREWITH; AND PROVIDING PENALTIES FOR VIOLATION THEREOF AND
ADDING CHAPTER 10.14 TRAFFIC REGULATIONS TO THE WOODLAND PARK
MUNICIPAL CODE**

WHEREAS, the City of Woodland Park, Colorado (the “City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to C.R.S. § 42-4-110(1)(b), local governments may, consistent with the procedural requirements of C.R.S. §§ 31-16-201, *et seq.*, adopt by reference all or any part of a model municipal traffic code that embodies the rules of the road and vehicle requirements as set out in the State of Colorado’s traffic laws, and

WHEREAS, the Colorado Department of Transportation has prepared and adopted a 2024 revised edition of the Model Traffic Code for Colorado (the “2024 Model Traffic Code”), and

WHEREAS, The City previously adopted the 2010 edition of the Model Traffic Code for Colorado, and

WHEREAS, a public hearing on this Ordinance at second reading, and proper notice thereof, was provided in accordance with Colorado Revised Statutes section 31-16-203, and

WHEREAS, penalties for violating the Model Traffic Code adopted hereby are set forth in full in this Ordinance and shall be published in full after final adoption in accordance with C.R.S. § 31-16-204, and

WHEREAS, certified copies of the Code adopted hereby were filed with the City Clerk at least fifteen (15) days prior to public hearing on this Ordinance and such codes remain open to public inspection and purchase, and

WHEREAS, this Ordinance is intended to repeal and restate Chapter 10.04 of the Woodland Park Municipal Code, and

WHEREAS, this Ordinance is intended to adopt by reference the 2024 Edition of the Model Traffic Code for Colorado, subject to the identified additions, modifications, and deletions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODLAND PARK, COLORADO, AS FOLLOWS:

Section 1. Chapter 10.04, “Traffic Code” is hereby repealed in its entirety.

Section 2. The new Chapter 10.04, “Traffic Code” is hereby added to the Code of the City of Woodland Park, as follows:

CHAPTER 10.04
MODEL TRAFFIC CODE

Sec. 10.04.001 – Short Title.

This chapter may be known and cited as the “Municipal Traffic Code.”

Sec. 10.04.002 – Adoption.

Pursuant to Parts 1 and 2 of Article 16 of Title 31, C.R.S., as amended, there is hereby adopted by reference Articles I and II, inclusive, of the 2024 edition of the Model Traffic Code for Colorado, promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 2829 W Howard Place, Denver, CO 80204. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the City. The purpose of this Article and the code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State and the Nation. Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the City Manager and may be inspected during regular business hours.

Sec. 10.04.003 – Deletions.

The 2024 edition of the Model Traffic Code is adopted as if set out at length, save and except the following articles and/or section which are declared to be inapplicable to this municipality and are expressly deleted: Section 1702.

Sec. 10.04.004 – Additions or modifications.

The Model Traffic Code as adopted herein is subject to the following amendments, additions or modifications:

(a) Section 103(2) and 103(2)(b), Scope and effect of Model Traffic Code, is amended to read as follows:

“(2) The provisions of this code relating to the operation of vehicles and the movement of pedestrians shall apply to every street, highway, alley, sidewalk, driveway, park and to every other public way or public place or public parking area, either within or outside the corporate limits of the city, the use of which the city has jurisdiction and authority to regulate except:

(b) Sections 1401, 1402 and 1413 of this code pertaining to reckless driving, careless driving and eluding a police officer shall apply to all land, areas, and property (including private) within or outside the corporate limits of the city, the use of which the city has jurisdiction and the authority to regulate.”

(b) Section 103 (3) and (4), Scope and effect of Code – Exceptions to provisions, are added to read as follows:

“(3) All references in this code to “official sign(s),” “official signal(s),” “official traffic control devices,” “official devices(s),” or “official marking(s),” shall be construed to refer to any and all signs, signals, devices or markings that have been placed on or about roadways, highways and other public property within the city by authority of the city, or other proper governmental official or agency, whether or not the city or such other proper governmental official or agency exercised such authority by resolution or ordinance. It is the intent of this section that the “official” nature of any sign, signal, device or marking not be construed to be an element of any traffic offense or other provision or violation of this code. Any and all references in this code to acts of a municipality “by resolution,” “by ordinance,” or “by local ordinance,” are repealed and to be construed only to guide administrative action and not as an element of any traffic offense or violation of this code.

(4) All provisions in this code establishing fines and other sentencing conditions are repealed in their entirety, it being the intent that any violation of this code be subject to the penalty provision as set forth in Section 10.04.005 of the Woodland Park Municipal Code. To the extent any notice or other procedures set forth in this code's Appendices conflict with the requirements or procedures set forth in the City's Home Rule Charter or the Woodland Park Municipal Code, the Charter and Municipal Code shall prevail.”

(c) Section 236, Child restraint systems required – definitions – exemptions, are amended by the addition of the following:

“(11) To the extent any provision herein is inconsistent with C.R.S. 42-2-236, the provisions of C.R.S. 42-2-236 shall apply and they are hereby adopted.”

(d) Section 1203, Parking or leaving vehicle unattended; leaving the scene of an accident, is amended to read as follows:

“(1) It is unlawful for any person to:

(a) Park or leave any vehicle unattended upon any bridge, viaduct, tunnel, or where such vehicle constitutes an obstruction of traffic.

(b) Park or leave any vehicle unattended upon a street or parked illegally so as to constitute a definite hazard or obstruction to the normal movement of traffic, or leave on any public street with engine running, or with a key in the ignition, or both, or park in any area designated by the city engineer as a “tow-away” area; or leave any vehicle unattended or parked so as to block ingress or egress from driveways so as to obstruct sidewalk pedestrian traffic.

(c) Leave any vehicle parked in the same place upon a street or street right-of-way continuously for a period of 72 hours, or leave any vehicle parked upon a street fronting on a business zone or continuously for a period of 24 hours or more.

(d) Park construction or heavy equipment on a street or street right-of-way continuously for a period of 72 hours.

(e) Park a vehicle upon the roadway or in a community parking lot in violation of the prohibitions or restrictions posted on official signs.

(f) Park a vehicle upon a roadway or in a community parking lot for the purpose of:

(i) Displaying the vehicle for sale, although displaying a “For Sale” sign in a vehicle that is using the community parking lot for the purposes normally associated with a parking lot shall not be a violation;

(ii) Washing, greasing, painting, or repairing a vehicle except repairs as necessitated by an emergency; or

(iii) A display or advertisement that requires a permit from the City.

(2) Where a vehicle is reasonably believed to have been involved in an accident, it is unlawful for the driver of any such vehicle, or the vehicle which he or she is driving, to have left the scene of an accident without reporting the accident to the proper authorities.”

(e) Section 1209, Owner liability for parking violations, is amended by the addition of the following:

“In any prosecution charging a violation of any provision of this Part 12 governing the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such regulation, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute an evidentiary prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the location where, and for the time during which, such violation occurred.”

(f) Appendices Definitions of the Model Traffic Code, are amended to add the following new definitions:

A. "Anywhere within this municipality" includes any property, public or private, located within the incorporated city limits of Woodland Park, Colorado.

B. "Code" as used herein, is synonymous and interchangeable with the Municipal Traffic Code and Model Traffic Code as adopted and set forth in Chapter 10.04 of the Woodland Park Municipal Code.

C. "Street" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; or the entire width of every way declared to be a public street or highway by any law of this state; provided, however, that this definition shall include any publicly used way open to the public for purposes of vehicular travel on any public school ground whether or not such way is publicly maintained.

D. "Community parking lot" means an area not within a building that is controlled, maintained and/or owned by the City where motor vehicles may be left for the purposes of temporary off-street parking use when such use is not accessory to any other use. A parking fee may or may not be charged.”

Section 10.04.005 – Penalties.

Section 1701 of the Model Traffic Code is repealed and reenacted to provide for the following penalties, herewith set forth in full, which shall apply to all violations of the Model Traffic Code adopted herein:

“1701. Traffic offenses classified – Schedule of fines.

(A) It is a traffic infraction for any person to violate any of the provisions of Parts 1 to 3 and 5 to 19 of the Model Traffic Code as adopted and set forth in this Chapter 10.04 unless such violation is, by the Model Traffic Code, the City Charter, the Woodland Park Municipal Code, any city ordinance or by any law of this state, declared to be a felony, misdemeanor, petty offense, or misdemeanor traffic offense. Such traffic infraction shall constitute a civil matter.

(B) It shall be unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of the Municipal Traffic Code, or to commit any

act or omission declared to be a misdemeanor, except that unless conduct is specifically designated criminal herein, any offense which is not punishable by imprisonment in jail is not criminal and is deemed decriminalized and unless a specific lesser penalty is specifically provided for the violation of any specific portion of this Municipal Traffic Code, the City Charter or any other ordinance of the city, the violation of any provision of this Municipal Traffic Code shall be punishable as follows:

Except as hereinafter provided, every person convicted of a violation of any provision of the Municipal Traffic Code of Woodland Park, Colorado, and/or Model Traffic Code for Colorado as adopted and set forth in Chapter 10.04 of the Woodland Park Municipal Code, shall be punished by a fine not exceeding two thousand six hundred and fifty dollars except any person convicted of a traffic misdemeanor. The following violations shall be deemed traffic misdemeanors: Violating Section 1101(12)(b) driving twenty-five miles per hour or more in excess of the reasonable and prudent speed; Violating Section 1105, speed contest; Violating Section 1203(2), leaving the scene of an accident; Violating Section 1401, reckless driving; Violating Section 1402, careless driving; Violating Section 1409, compulsory insurance; and Violating Section 1413, eluding a police officer, all being violations of the Model Traffic Code for Colorado as adopted. A person convicted of a traffic misdemeanor shall be punished by a fine not exceeding two thousand six hundred and fifty dollars or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment.

(C) In addition to the above penalties and fines, the city may obtain enforcement of its ordinances by seeking injunctive or other appropriate relief in a court of proper jurisdiction.

(D) Each day or portion thereof, during which any violation is committed, continued or permitted shall constitute a separate offense and shall be punishable as a separate offense.

(E) Any person who commits a moving traffic violation in violation of any of the provisions of Parts 7, 9, 11, 14 or 19 in a designated school zone is subject to increased penalties.

(F) Any person who commits a traffic violation of any of the provisions of Parts 7, 9, 11, 14 or 19 in a designated maintenance, repair or construction zone is subject to increased penalties.”

Section 10.04.006 – Application.

This Article shall apply to every street, alley, sidewalk area, driveway, park and to every other public way or public place or public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of Sections 236, 1211, 1401, 1402, 1409(3) and 1413 of the code, respectively concerning child restraint systems, safety belt systems, reckless driving, careless driving, compulsory insurance and eluding a police officer, shall apply not only to public places and ways but also throughout this municipality. In addition, any provisions of the Model Traffic Code specifically made applicable to public property or private property shall apply throughout this municipality.

Section 10.04.007 – Notice to appear in court.

Except when authorized or directed to take a person before a magistrate or other court, as provided in the Municipal Traffic Code, any police officer upon making an arrest for any violation of the Municipal Traffic Code, shall take the name, address and operator's license number of said

person, the registered number of the motor vehicle involved, and such other pertinent information as may be necessary, and shall prepare and issue a notice or summons to said person in writing on the authorized form of notice or summons to respond and answer to the charge against said person at a place and at a time to be specified in the notice or summons, and if the arrested person does not possess a valid Colorado driver's license, such arrested person, in order to secure release, must give his or her written promise to appear in court by signing the penalty assessment notice or summons. If the arrested person does possess a valid Colorado driver's license the person shall not be required to give his or her written acknowledgment or promise to appear, on the penalty assessment notice or summons.

Section 10.04.008 – Failure to obey summons or notice.

For the purposes of the Municipal Traffic Code, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or notice or to pay the required fine. It is a violation of this section for any person to fail to appear to answer any offense charged under this code.

Section 3. The new Chapter 10.14, “Traffic Regulations” is hereby added to the Code of the City of Woodland Park, as follows:

CHAPTER 10.14
TRAFFIC REGULATIONS

Section 10.14.001 – Snowmobiles.

A. Operation of Snowmobiles Within the city.

1. A snowmobile may be operated on the streets anywhere in this municipality, provided that:

2. Snowmobiles are operated over a route as far to the right of the roadway as possible;

3. When driven on the right-of-way, snowmobiles are operated so the units are moving in the same direction as the nearest lane of traffic at all times;

4. All operators under the age of sixteen years riding on the roadway shall be preceded at a distance of no more than fifty feet by a snowmobile operator in possession of a valid Colorado driver's license.

5. Snowmobile operators shall comply with all traffic regulations required of other motorized vehicles within the city;

6. Snowmobile operators shall allow sufficient space between units to allow other motorized traffic to pass the units singularly;

7. Snowmobiles shall comply with all regulations provided for snowmobiles in Title 33, Article 14.5, C.R.S. 2013 and subsequent amendments thereto, which are not in conflict with those regulations set forth in this chapter;

8. Snowmobile operators shall exercise due safety precautions at all times and shall proceed through all intersections at a reduced rate of speed;

9. No snowmobile shall be operated on private property not owned or under the control of the operator, unless permission has been obtained from the owner or the owner's agent, which evidence of permission must be supplied in writing upon request of peace officers investigating such operation of snowmobiles.

10. Headlights shall be illuminated at all times while being operated anywhere in this municipality.

B. Required Equipment. All snowmobiles operated anywhere in this municipality shall be equipped as required by laws of the state.

C. Excessive Noise Prohibited. Excessive noise shall not be permitted and all snowmobiles operated anywhere in this municipality shall be equipped with an adequate muffler in constant operation.

Section 10.14.002 – Licenses for drivers required – penalty – definition.

A. Except as otherwise provided for commercial drivers, no person shall drive any motor vehicle upon a highway anywhere in this municipality unless such person has been issued a currently valid driver's license or an instruction permit by the department under this chapter.

B. No person shall drive any motor vehicle upon a highway in this municipality if such person's driver's or minor driver's license has been for one year or less and such person has not been issued another such license by the department or by another state or country subsequent to such expiration.

C. No person shall drive any motor vehicle upon a highway in this municipality unless such person has in his or her immediate possession a current driver's or minor driver's license or an instruction permit issued by the department.

D. A charge of a violation on subsection (B) of this section shall be dismissed by the court if the defendant elects not to pay the penalty assessment and, at or before the defendant's scheduled court appearance, exhibits to the court a currently valid driver's or minor driver's license.

E. The conduct of a driver of a motor vehicle which would otherwise constitute a violation of this section is justifiable and not unlawful when:

1. It is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of said driver and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by this section.

F. Any person who violates any provision of this section commits a class A traffic infraction.

Section 10.14.003 – Unregistered vehicles on public property.

No person shall operate, leave, or deposit upon the public property in the City any vehicle which is not registered and/or licensed by the State or which does not display vehicle license plates belonging to such vehicle. The owner of such vehicle shall be presumed to be the person who deposited or left the same upon the public way contrary to the preceding sentence, and State motor vehicle records identifying the owner of such vehicle shall create a presumption that the person name in those records the true owner.

Section 4. The City Clerk shall cause at least one certified copy of the Code adopted by reference by this Ordinance to be on file in his or her office at least fifteen (15) days prior to the public hearing on this Ordinance and, after adoptions, shall maintain a reasonable supply of copies of such Codes available for purchase by the public at a moderate price.

Section 5. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or enforceable for any reason, such decision shall not affect the constitutionality, validity, or enforceability of the remaining portion of this Ordinance.

Section 6. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

THE FOREGOING ORDINANCE IS HEREBY ADOPTED BY THE CITY COUNCIL OF WOODLAND PARK, COLORADO ON THIS ____DAY OF _____, 2024.

City of Woodland Park

Kellie Case, Mayor

ATTEST:

City Clerk, Suzanne Leclercq

CITY OF WOODLAND PARK, COLORADO
ORDINANCE NO. 1477
(Series of 2024)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WOODLAND PARK,
COLORADO AMENDING TITLE 5 OF THE WOODLAND PARK MUNICIPAL
CODE, REGARDING WIRELESS COMMUNICATION FACILITY REGULATIONS,
TO ESTABLISH REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES**

WHEREAS, the City of Woodland Park, Colorado (the “City”) has been duly organized and is validly existing as a home rule city under Article XX, Section 6 of the Colorado Constitution and the City Charter;

WHEREAS, pursuant to C.R.S. § 31-15-401, the City possesses the authority to adopt laws and ordinances within its police power in furtherance of the public welfare;

WHEREAS, pursuant to C.R.S. § 31-23-301, the City possesses the authority to regulate and restrict the height, size, location, and uses of buildings and other structures in furtherance of the public welfare;

WHEREAS, further, pursuant to C.R.S. § 29-20-104, the City possesses the authority to regulate the use of land on the basis of the impact thereof on the community;

WHEREAS, the City has no existing regulations concerning Wireless Communications Facilities that are consistent with federal law;

WHEREAS, the City Council finds it desirable and prudent to accommodate, but also regulate Wireless Communication Facilities to provide for managed development, installation, maintenance, modification, and removal of Wireless Communication Facilities that is consistent with the City’s character and to protect the welfare of the public;

WHEREAS, at the same time, the City Council recognizes the importance of modern, reliable wireless connectivity for its residents and endeavors to not unreasonably or materially inhibit the development of a competitive wireless communications marketplace in the City;

WHEREAS, the City Council finds it desirable and appropriate, and in the best interest of the general welfare of its citizens to amend Title 5 of the Woodland Park Municipal Code (the “Code”), by amending Chapter 5.24, to expand the already existing regulations to Small Cell Facilities to incorporate all Wireless Communication Facilities.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF WOODLAND PARK, COLORADO, AS FOLLOWS:**

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

Section 2. Chapter 5.24 of the Code, concerning wireless communication facilities, is hereby amended to read as follows:

**Chapter 5.24 - ~~SMALL CELL FACILITIES~~ WIRELESS COMMUNICATION FACILITIES
(WFCs)**

Sections:

5.24.010 - Definitions.

As used in this chapter, the following words and phrases shall have the meaning ascribed to them as follows, unless the context clearly indicates otherwise:

Alternative Tower Structure means any manmade trees, clock towers, bell steeples, light poles, water towers, farm silos, or similar alternative design mounting structures that conceal where technically feasible the presence of WCFs to make them architecturally compatible with the surrounding area pursuant to this Chapter. A stand-alone pole in the Right-of-Way that accommodates Small Cell Facilities is considered an Alternative Tower Structure provided it meets the concealment standards of this Chapter. Alternative Tower Structures are not considered Towers, for the purposes of this Chapter.

Antenna means a device used to transmit or receive radio or electromagnetic waves including without limitation panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one (1) or more elements, multiple antenna configurations, and other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending or receiving of wireless communications signals.

Antennas, panel means an array of antennas, rectangular in shape, used to transmit and receive telecommunication signals.

Antenna, whip means a single antenna that is cylindrical in shape and omni-directional.

Base Station means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

A. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the city, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the city, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Camouflage or Camouflage Design Techniques means measures used in the design and siting of WCFs with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include Concealment Design Techniques where a facility is designed to look like something other than a WCF.

Concealment or Concealment Design Techniques means utilization of elements of stealth design in a facility such that the facility looks like something other than a WCF. Concealment can further include a design which mimics and is consistent with the nearby natural or architectural features (such as an artificial tree), is incorporated into existing permitted facilities (such as being attached to the exterior of such facility and painted to match it), or replaces existing permitted facilities (such as traffic signs or freestanding light standards) so that the presence of the WCF is not apparent. This definition does not include conditions that merely minimize visual impact but do not incorporate Concealment Design Techniques such that the facility looks like something other than a WCF.

Eligible Facilities Request means any request for modification of an existing Tower or Base Station that does not Substantially Change the physical dimensions of such Tower or Base Station involving:

- A. Collocation of new Transmission Equipment;
- B. Removal of Transmission Equipment; or
- C. Replacement of Transmission Equipment.

A request for modification of an Existing Tower or Base Station that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards, or does not comply with any relevant federal requirements, is not an Eligible Facilities Request.

Eligible Support Structure means any Tower or Base Station as defined herein, provided that it is existing at the time the relevant application is filed with the city.

Existing means, for purposes of this Chapter, a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time of an Eligible Facilities Request, provided that a Tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

OTARD means Over-the-air receiving device.

OTARD Antenna means:

- A. An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or
- B. An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or
- C. An antenna that is designed to receive television broadcast signals.

OTARD antenna structure means any pole, Tower, or other structure designed and intended to support an OTARD Antenna

Related Accessory Equipment means the Transmission Equipment customarily used with, and incidental to Wireless Communication Facilities antennas, including by way of example, coaxial or fiber-optic cable, regular and backup power supply and remote radio units.

Right-of-Way means, in the context of this Chapter, any public street or road that is dedicated to public use for vehicular traffic except for those rights-of-way owned by the Colorado Department of Transportation within the City limits.

Site means, in the context of this Chapter for Towers and Eligible Support Structures, the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. For Alternative Tower Structures, Base Stations and Small Cell Facilities in the Right-of-Way, a Site is further restricted to that area comprising the base of the structure and to other Related Accessory Equipment already installed on the ground.

Small cell facility means a wireless service facility that meets both of the following qualifications:

- A. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
- B. Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume as measured on the exterior surface of the enclosure. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

Substantial Change means a modification substantially changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:

A. For Towers, other than Towers in the right-of-way, it increases the height of the Tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna; for other Eligible Support Structures, including Towers in the right-of-way, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;

B. For Towers, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

C. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the Eligible Support Structure but not to exceed four (4) cabinets per application; or for Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure;

D. For any Eligible Support Structure, it entails any excavation or deployment outside the current site;

E. For any Eligible Support Structure, it would defeat the Concealment elements of the Eligible Support Structure by causing a reasonable person to view the structure's intended stealth design as no longer effective;

F. For any Eligible Support Structure, it does not comply with the conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (A), (B), and (C) of this definition.

For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station.

Tower means any structure that is designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes radio

and television transmission towers, self-supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers, and other similar facilities. Small Cell Facilities in rights-of-way are not Towers.

Transmission Equipment means equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility or WCF means a facility used to provide personal wireless services as defined in 47 U.S.C. 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building used for serving that building only. A WCF includes antennas (including without limitation, directions, omni-directions, and parabolic antennas), Base Stations, Transmission Equipment, Small Cell Facilities, Towers, and support equipment. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios and their associated transmitting antennas.

5.24.020 - Purpose.

The purpose of this chapter is to regulate the placement, construction, and modification of **Wireless Communication Facilities with the goal to: Small Cell Facilities to protect the welfare of the public and to provide for managed development, installation, maintenance, modification, and removal of Small Cell Facilities that is consistent with the city's character, while at the same time not unreasonably interfering with or materially inhibiting the development of a competitive wireless communications marketplace in the city.**

- A. **Provide for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the City with the fewest number of WCFs to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services including all of those who install, maintain, operate, and remove WCFs.**
- B. **Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including, but not limited to, concealment design techniques and undergrounding of WCFs and the equipment associated therewith.**
- C. **Encourage the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs.**
- D. **Encourage the use of wall mounted panel antennas.**
- E. **Encourage roof mounted antennas only when wall mounted antennas will not**

- provide adequate service or are not otherwise feasible.
- F. Encourage the location of Towers in non-residential areas, in a manner that minimizes the total number of Towers needed throughout the community.
 - G. Strongly encourage the collocation of WCFs on new and existing Sites.
 - H. Encourage owners and users of antennas and Towers to locate them, to the extent possible, in areas where the adverse impact on the community is minimized.
 - I. Enhance the ability of wireless communication service providers to provide such services to the community quickly, effectively, and efficiently.
 - J. Effectively manage WCFs in the Right-of-Way.

5.24.030 - Scope ~~and applicability; waiver; exemptions.~~

No person shall construct a Wireless Communication Facility ~~Small Cell Facility~~ in the city except in compliance with the provisions of this chapter. Wireless communications providers shall request permission to locate WCFs ~~Small Cell Facilities~~ or modify existing WCFs ~~Small Cell Facilities~~ pursuant to the requirements of this chapter. The siting, mounting, placement, construction, and operation of WCFs ~~Small Cell Facilities~~ is a permitted use by right in any zone, provided that the conditions of this chapter are satisfied.

The requirements set forth in this Section shall not apply to:

-
- A. Amateur Radio Antennas. Amateur radio antennas that are owned and operated by a federally license amateur radio station operator or are used exclusively for receive-only antennas, provided that the requirement that the height be no more than the distance from the base of the antenna to the property line is met. The City or its designee has the authority to approve modifications to the height restriction, in in the reasonable discretion of the City, modifications are necessary to comply with federal law.
 - B. Pre-existing WCFs. Any WCF for which a permit has been properly issued shall not be required to meet the requirements of this Section, other than the requirements of subparagraph's Section 5.24.070(A), Section 5.24.070(E), and Section 5.24.070(F) below. Changes and additions to pre-existing WCFs (including trading our of antennas for an equal number of antennas) shall meet applicable requirements of this Section.
 - C. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided that the requirement that the height be no more than the distance from the base to the property line are met. The City Manager or his/her designee has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.

5.24.040 - Procedures for review.

A. **Wireless Communication Facilities** ~~Small-Cell Facilities~~ - Generally. No new **WCF** ~~Small-Cell Facility~~ shall be constructed except after a written request from an applicant, reviewed and approved by the city in accordance with the procedures set forth in this subsection (A), unless eligible for review as an Eligible Facilities Request as set forth in subsection (B).

1. Within ten (10) business days of receipt of an application for a new **WCF** ~~Small-Cell Facility~~, the city manager shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this chapter.

a. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within ten (10) business days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The timeframe for review resets to zero (0) when the applicant makes a supplemental written submission in response to the city's notice of incompleteness.

c. Following a supplemental submission, the city will notify the applicant within ten (10) business days whether the supplemental submission provided the information identified in the original notice delineating missing information. If the application remains incomplete, the timeframe is tolled pursuant to the procedures identified in the foregoing paragraphs. In the case of a second or subsequent notice of incompleteness, the city may not specify missing information or documents that were not delineated in the original notice of incompleteness.

2. Subject to tolling, the city shall approve or deny an application for a new **WCF** ~~Small-Cell Facility~~ within ninety (90) calendar days of the date on which the city receives such an application.

B. **Wireless Communication Facilities** ~~Small-Cell Facilities~~ - Eligible Facilities Requests. No collocation of a **WCF** ~~Small-Cell Facility~~ nor modification to any existing **WCF** ~~Small-Cell Facility~~ shall occur except after a written request from an applicant, reviewed and approved by the city in accordance with the procedures for Eligible Facilities Requests set forth in this subsection (B).

1. Upon receipt of an application for an Eligible Facilities Request, the city shall review such application to determine whether the application so qualifies. An application for an Eligible Facilities Request does not qualify as such if the modification would result in a Substantial Change to an Eligible Support Structure or would violate a generally applicable building, structural, electrical, or safety code or other law codifying objective standards.

2. Subject to tolling, the city shall approve an Eligible Facilities Request within sixty (60) calendar days of the date on which the city receives such an application, unless it determines that the request is not properly classified as an Eligible Facilities Request. The sixty (60) calendar day review period begins to run when the application is filed with the city, and may be tolled by mutual agreement of the city and the applicant or where the city determines that the application is incomplete, as follows:

a. To toll the timeframe for incompleteness, the city must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;

b. Upon notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again, but does not reset to zero (0), when the applicant makes a supplemental written submission in response to the city's notice of incompleteness; and

c. Following a supplemental submission, the city will notify the applicant within ten (10) calendar days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in the foregoing paragraphs. In the case of a second or subsequent notice of incompleteness, the city may not specify missing documents or information that were not delineated in the original notice of incompleteness.

3. In the event the city fails to act on an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant of approval becomes effective when the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

C. The city manager shall be the final approval authority for all ~~WCFs Small-Cell Facilities~~ and Eligible Facilities Requests and, upon approval, shall issue a permit to the applicant to deploy or modify a ~~WCF Small-Cell Facility~~.

1. Applications for Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Right-of-Way. In all zoning districts and Planned Unit Developments, each application for a Base Station, Alternative Tower Structure, or Alternative Tower Structure within Right-of-Way shall be reviewed and considered for approval by the City for conformance with this Section. Except for WCFs in the Right-of-Way that meet the requirements of this Section or Eligible Facilities Requests, the City may refer to application to the Planning Commission and City Council for approval if the City finds the proposed WCF to have a significant visual impact (e.g., proximity to historic or designated view corridors, or on significant community features) or otherwise substantially incompatible with the structure on which the WCF will be installed, or it does not meet the clear intent of this Section.
2. Applications for Towers. In all zoning districts and Planned Unit Developments, Towers may be permitted only as a special use approved by the City Council with a recommendation from the Planning Commission. Such Towers shall be reviewed for conformance to this Section using the use by special review procedures set forth in Chapter 18.57 and Chapter 18.61 of the City Code in conjunction with the application sections of this Section. All applications for Towers shall demonstrate that other alternative design options such as Base Stations or Alternative Tower Structures are not viable options.

D. Where an applicant seeks approval for more than one (1) ~~WCF Small Cell Facility~~, the city shall allow the applicant, at the applicant's discretion, to file a consolidated application for ~~WCFs Small Cell Facilities~~ and receive a single approval for multiple Small Cell Facilities in a consolidated application. For a consolidated application, each ~~WCF Small Cell Facility~~ within the consolidated application remains subject to review for compliance with the requirements of this chapter. The denial of any individual ~~WCF Small Cell Facility~~ is not a basis to deny the consolidated application as a whole or any other ~~WCF Small Cell Facility~~ incorporated within the consolidated application.

E. The city manager may apply reasonable conditions to the approval of a ~~WCF Small Cell Facility~~ application or an Eligible Facilities Request to ensure conformance with applicable design criteria or to advance a legitimate city interest related to welfare, except where the city's authority is limited with respect to Eligible Facilities Requests.

F. Prior to approval, affidavits shall be required from the owner of the property and from the Applicant acknowledging that each is responsible for the removal of a WCF, including Related Accessory Equipment, that is abandoned or is unused for a period of six (6) months.

~~G.~~ F. The approval under this chapter for any ~~WCF Small Cell Facility~~ expires if the ~~WCF Small Cell Facility~~ is not established within one (1) year of the approval or if it is abandoned or unused for a period of six (6) months.

H. Compliance with Applicable Law. Notwithstanding the approval of an application for collocation as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in the City Code, and any other applicable regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permit or license issued by a local, state or federal agency with jurisdiction of the WCF;
2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
3. Be maintained in good working condition and to the standards established at the time of application approval or as otherwise required by applicable law; and
4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten (10) days from the time of notification by the City or after discovery by the owner or operator of the Site.

I. Compliance Report. Upon request of the City, the Applicant shall provide a compliance report within forty-five (45) days after installation of a WCF, demonstrating that as installed and in operation, the WCF complies with all conditions of approval, applicable City requirements and standard regulations.

5.24.050 - Application contents; fees.

A. An application for a **Wireless Communication Facility** ~~Small Cell Facility~~ or an Eligible Facilities Request shall include the following information and materials:

1. The applicant's name, address, and telephone number and the name, address, and telephone number of any representative authorized to act on behalf of the applicant.
2. A description of the property on which the **WCF** ~~Small Cell Facility~~ is proposed for development.
3. A disclosure of the ownership of the property on which the **WCF** ~~Small Cell Facility~~ is proposed for development, and a demonstration of the applicant's right to install a **WCF** ~~Small Cell Facility~~ on such property.
4. An eight and one-half (8½) inches by eleven (11) inches vicinity map locating the subject property within the city.
5. A written description of the proposal and a written explanation of how the proposed **WCF** ~~Small Cell Facility~~ complies with the requirements for **WCFs** ~~Small Cell Facilities~~ or, if applicable, Eligible Facilities Requests.
6. A signed statement from a qualified radio frequency engineer, certifying that a technical evaluation of proposed **WCF** ~~Small Cell Facility~~ indicates no potential interference problems and that the site will comply with all applicable regulations for radio frequency emissions promulgated by the FCC.
7. A signed statement from the applicant certifying the accuracy of the information contained in the application.

B. An applicant for a **WCF** ~~Small Cell Facility~~ or Eligible Facilities Request shall pay the required fees as set forth in the city's fee schedule. An application submitted without the required fees shall be deemed incomplete.

C. All applications are public records and the information contained therein is subject to disclosure, except such information that is protected from public disclosure by applicable law.

5.24.060 - Design standards.

~~Small Cell Facilities shall conform to the following design standards:~~

~~A. Trees. Existing trees shall be preserved to the maximum extent possible.~~

~~B. Height limitation. The maximum height of any Small Cell Facility shall either not exceed the maximum structure height established for the zoning district in which the facility is to be located or not extend beyond five (5) feet taller than any other utility poles or traffic signals within five hundred (500) feet of the proposed Small Cell Facility located within the same zone district.~~

~~C. Camouflage/concealment required. Small Cell Facilities shall, to the maximum extent possible, use Concealment Design Techniques, such as incorporating the facility into the built environment, using a pole painted a color consistent with other utility poles in the vicinity (with all antennas and related equipment located within the pole structure), or replacing existing permitted facilities with Small Cell Facilities located within the replaced poles, so that the presence of the Small Cell Facility is not apparent. Where Concealment Design Techniques are not possible, Small Cell Facilities shall utilize Camouflage Design Techniques. Camouflage Design Techniques include, but are not limited to using materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the site to the surrounding natural setting and built environment.~~

~~D. Non-reflective materials. The visible exterior surfaces of Small Cell Facilities, such as poles, antennas, vaults, and equipment enclosure structures shall be constructed out of or finished with non-reflective materials and shall be painted to match as closely as possible the color and texture of the vertical infrastructure on which it is mounted.~~

~~E. Equipment vaults below grade. Except for equipment that is expressly permitted above grade for a Small Cell Facility, equipment vaults and other Transmission Equipment shall be placed below grade when located within the right-of-way. Such equipment may be placed above grade outside of the right-of-way, provided Concealment/Camouflage Design Techniques are utilized.~~

~~F. Multiple users. To the extent practicable, all Small Cell Facilities shall be designed and constructed to permit such facilities to accommodate at least two (2) wireless service providers on the same facility.~~

~~G. Separation. All stand-alone Small Cell Facilities located within the right-of-way shall be separated from other stand-alone Small Cell Facilities by a distance of at least six hundred (600) feet. In determining compliance with this separation requirement, the city manager may consider approved and pending applications for other Small Cell Facilities.~~

~~H. Residential property. When located adjacent to a residential property, a Small Cell Facility must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, a Small Cell Facility must be placed in front of the common side yard property line adjoining residential properties or on the corner formed by two intersecting streets.~~

~~I. Any other administratively approved Small Cell Facility design standards adopted by the city manager.~~

The requirements set forth in this Section shall apply to the location and design of all Wireless Communications Facilities governed by this Section as specified below; provided, however, that the City may waive one (1) or more of these requirements if it determines that the goals of this Section are better served thereby. WCFs shall be designed and located to minimize the impact on surrounding properties and residential neighborhoods and to maintain the character and appearance of the City consistent with other provisions of this Code.

- A. Camouflage/Concealment. All WCFs and any Related Accessory Equipment shall, to the maximum extent possible, use Concealment design techniques, and where not possible utilize Camouflage Design Techniques. Camouflage Design Techniques include, but are not limited to using materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and built environment.
1. Where WCFs are located in areas of high public visibility, they shall, where physically possible, be designed to be concealed, and where not possible to be concealed, to minimize the WCF profile through placement of equipment fully or partially underground, or by way of example and not limitation, behind landscape berms.
 2. A concealment design may include the use of Alternative Tower Structures should the City determine that such design meets the intent of this Code and the community is better served thereby.
 3. All WCFs, such as antennas, vaults, equipment enclosures, and Towers shall be constructed of non-reflective materials (visible exterior surfaces only) and, where applicable, shall be painted to match as closely as possible the color and texture of any infrastructure on which it is mounted.
- B. Siting.
1. No portion of any WCF may extend beyond the property line.
 2. WCFs shall be required to be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers and the same WCF unless the City approves an alternative design. No WCF owner or operator shall unfairly exclude a competitor from using the same facility of Site.
 3. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Code standards.
 4. WCFs shall not encroach into any sight triangles.
- C. Lighting. WCFs shall not be artificially lighted, unless required by the FM or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- D. Landscape and Fencing Requirements.
1. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the lot or parcel, below any applicable Code standards including without limitation, Planned Unit Development standards.
 2. The Site of the WCF shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the Site.
 3. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived in whole or in part by the City.

4. Existing mature tree growth and natural landforms on the Site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the Site perimeter may be sufficient to buffer. Applicant's plan minimizes the number of trees to be removed and any trees removed are replaced at a ratio of two (2) to one (1).
- E. Specific Design Requirements. Additional design requirements shall be applicable to the types of WFCs as specified below:
1. Base Stations.
 - a. Base Stations shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;
 - b. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet;
 - c. Wall-mounted WCFs shall not extend above the roofline unless mounted to a penthouse; and
 - d. Roof-mounted WCFs shall be approved only where an Applicant demonstrates a wall mounted WCF is inadequate to provide service and shall be evaluated for approval based upon the following criteria:
 - i. Roof-mounted whip antennas shall extend no more than twelve (12) feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;
 - ii. Roof-mounted panel antennas shall extend no more than seven (7) feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and
 - iii. Other roof-mounted Related Accessory Equipment shall extend no more than seven (7) feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.
 2. Alternative Tower Structures (ATS) and Small Cell Facilities.
 - a. ATS shall be designed and constructed to look like a building, facility, or structure typically found in the area in order that the WCF is concealed;
 - b. Height or size of the proposed ATS or Small Cell Facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to maximum height limit of fifty (50) feet;
 - c. ATS shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
 - d. ATS should take into consideration the uses on adjacent and nearby property and the compatibility of the facility to these uses;
 - e. ATC and Small Cell Facilities shall be compatible with the surrounding topography, tree coverage, and foliage;
 - f. ATS and Small Cell Facilities shall be designed utilizing design characteristics that have the effect of concealing where technically feasible and generally reducing or eliminating visual obtrusiveness; and

- g. Visual impacts of the proposed ingress and egress shall be minimized.
- 3. Alternative Tower Structures (ATS) and Small Cell Facilities located in the Right-of-Way.
 - a. No ATS pole shall be higher than thirty-five (35) feet including any cannister or antennas located on top of a pole;
 - b. No pole or structure shall be more than ten (10) feet higher (as measured from the ground to the top of the pole or structure) than any existing utility or traffic signal within five hundred (500) feet of the pole or structure;
 - c. Any new pole for ATS or Small Cell Facilities shall be separated from any other existing WCF facility by a distance of at least six hundred (600) feet, unless the new pole replaces an existing traffic signal, street light pole, or similar structure determined by the City;
 - d. With respect to pole-mounted components, Small Cell Facilities shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives;
 - e. ATS must be concealed consistent with other existing natural or manmade features in the Right-of-Way near the location where the ATS will be located;
 - f. To the extent reasonable feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS;
 - g. When placed near a residential property, any ATS or Small Cell Facilities must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two (2) intersecting streets;
 - h. Small Cell Facilities shall:
 - i. Be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will be considerably altered; and
 - ii. Be designed such that all antennas, mast arms, equipment, and other facilities are sized to minimize visual clutter, and where possible, concealed within the structure; and
 - iii. Be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS; and
 - iv. Require that any ground mounted equipment be installed in an underground or partially underground equipment vault (projecting not more than thirty-six (36) inches above grade), or co-located within a traffic cabinet of a design approved by the City, unless a use by special review is obtained subject to the requirements of the City Code; and
 - v. Not alter vehicular circulation or parking within the Right-of-Way; and

- vi. Comply with the federal Americans With Disabilities Act and all applicable local, state, and federal laws and regulations; and
- vii. Not be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the City, the general public, or other person authorized to use or be present upon the Right-of-Way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the Right-of-Way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

4. Towers.

- a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the City;
- b. Tower structures should use existing landforms, vegetation, and structures to aid in concealing the facility from view or blending in with the surrounding built and natural environment;
- c. Monopole support structures shall taper from the base to the tip;
- d. All Towers shall be enclosed by security fencing or wall at least six (6) feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material unless temporary and approved by the City;
- e. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of fifty (50) feet;
- f. Towers should be sited in a manner that is least obtrusive to residential structures and residential district boundaries where feasible;
- g. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the Tower to these uses;
- h. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- i. Visual impacts of the proposed ingress and egress shall be minimized;
- j. No new Towers shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposed to address with its Tower application. Evidence submitted to demonstrate that no existing WCFs can accommodate these needs may consist of the following:
 - i. No existing WCFs are of sufficient height and are located within the geographic area required to meet the Applicant's engineering requirements;

- ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
- iii. The Applicant's proposed WCF would cause electromagnetic interference with the WCFs or the existing WCFs would cause interference with the Applicant's proposed WCFs' or
- iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
- k. A Tower shall meet the greater of the following minimum setbacks from all property lines:
 - i. The setback for a principal building within the applicable zoning;
 - ii. Twenty-five (25) percent of the facility height, including WCFs and Transmission Equipment; or
 - iii. The Tower height, including antennas if the Tower is in or adjacent to residential district or residential zoned property.
 - iv. Towers fifty (50) feet in height shall not be located within one-quarter mile from an existing Tower that is fifty (50) feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
- l. No Towers shall be permitted in the Right-of-Way.
- 5. Related Accessory Equipment – Related Accessory Equipment for all WCFs shall meet the following requirements:
 - a. All buildings, shelters, cabinets, and other accessory components shall be grouped as closely as technically possible;
 - b. The total footprint coverage area of the WCF's Related Accessory Equipment shall not exceed three hundred fifty (350) square feet;
 - c. No Related Accessory Equipment or accessory structure shall exceed twelve (12) feet in height; and
 - d. Related accessory Equipment shall be located out of sight wherever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Related Accessory Equipment shall be concealed where technically feasible or otherwise camouflaged in a manner appropriate for the specific site.

5.24.070 - Operational standards.

A. Federal requirements. All Wireless Communication Facilities ~~Small-Cell Facilities~~ shall meet the current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the federal government with the authority to regulate WCFs ~~Small-Cell Facilities~~. If such standards and regulations are changed, then the owners of the WCF ~~Small-Cell Facility~~ shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of

the ~~WCF Small-Cell Facility~~ at the applicant's expense.

B. Radio frequency standards. All ~~WCFs Small-Cell Facilities~~ shall comply with federal standards for radio frequency emissions. **If concerns regarding compliance with radio frequency emissions standards for a WCF have been made to the City, the City may request that the owner or operator of the WCF provide information demonstrating compliance. If such information is not sufficient in the reasonable discretion of the City, to demonstrate compliance, the City may request and the owner or operator of the WCF shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions f all antennas installed at the subject Site, and which compares the results with established federal standards. If, upon review, the City finds that the facility does not meet federal standards, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the Applicant.**

C. Signal interference. All ~~WCFs Small-Cell Facilities~~ shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone, public safety communications, and other services utilized by adjacent residential and non-residential properties. **The applicant shall provide a written statement from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems, and shall allow the city to monitor interference levels with public safety communications during this process.**

D. Legal Access. In all applications for WCFs outside of the Right-of-Way, an Applicant shall demonstrate that it owns or has lease rights to the Site.

~~E.~~ **D.** Operation and maintenance. All ~~WCFs Small-Cell Facilities~~ shall be maintained in compliance with standards contained in applicable local building and safety codes. If upon inspection, the city concludes that a ~~WCFs Small-Cell Facility~~ fails to comply with such codes and constitutes a danger to persons or property, then, **upon written notice being provided to the owner of the WCF, the owner shall have thirty (30) days from the date of notice to bring such WCF into compliance. If the Owner fails to bring such WCF into compliance in the required time period,** the city may take any action with respect to such violation as provided by applicable law, including removal of the ~~WCF Small-Cell Facility~~ at the applicant's expense.

~~F.~~ **E.** Abandonment and removal. Any ~~WCF Small-Cell Facility~~ that is not used for a period of six (6) months or more shall be deemed to be abandoned. No applicant shall fail to remove a ~~WCF Small-Cell Facility~~ that is abandoned. If a ~~WCF Small-Cell Facility~~ applicant fails to remove an abandoned facility at the request of the city manager, the city may remove the ~~WCF Small-Cell Facility~~ at the applicant's expense.

~~G.~~ **F.** Hazardous materials. No hazardous materials shall be permitted in association with ~~WCFs Small-Cell Facilities~~, except those necessary for the operation of ~~WCFs Small-Cell Facilities~~ and only in accordance with all applicable laws governing such materials.

H. ~~G.~~ Collocation. No ~~WCF Small-Cell Facility~~ applicant shall unreasonably exclude a communications competitor from using the same facility or location. Upon request by the city

manager, the applicant shall provide evidence explaining why collocation is not possible at a particular facility or location.

~~I. H.~~ Compliance with other laws. All ~~WCFs~~ ~~Small Cell Facilities~~ shall meet the requirements of the city design and construction standards, the requirements of Title 12, “Streets and Sidewalks,” and all other applicable local, state, and federal laws.

5.24.080 - Indemnification.

As a condition of its permit, the applicant for any ~~Small Cell Facility~~ **Wireless Communication Facility** shall, at its sole cost and expense, indemnify, hold harmless and faithfully defend the city, its officials, boards, commissions, commissioners, agents, and employees against any claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its equipment authorized by this chapter. This indemnification requirement will apply whether the act or omission complained of is authorized, allowed, or prohibited by applicable law, except in cases where liability is solely caused by the negligence of the person or persons covered by the indemnity.

5.24.090 - Waiver.

The city manager shall have the authority to waive any requirement or standard set forth in this chapter if the city manager makes a determination that the specific requirement or standard is preempted by federal or state law. Prior to applying the waiver to any pending application, the city manager shall, in consultation with the city attorney, make a written preemption determination which written determination shall identify the specific requirement or standard that is being waived and cite to the specific federal or state law provision that preempts the specific city requirement or standard set forth in this chapter.

Section 3. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 4. *Effective Date.* This ordinance shall be in full force and effect upon its publication as required by law.

PASSED BY CITY COUNCIL ON SECOND AND FINAL READING FOLLOWING PUBLIC HEARING THIS ____ DAY OF _____, 2023.

City of Woodland Park

Kellie Case, Mayor

ATTEST:

City Clerk, Suzanne Leclercq



STAFF REPORT

TO: Mayor Case and City Council

FROM: Ben Schmitt, City Engineer

DATE: June 27, 2024

SUBJECT: Agreement Between Baseline Engineering Corporation and the City of Woodland Park for Professional Engineering and Survey Services for Fairview Street Design in the amount of \$159,852 (Presenter Ben Schmitt, Director of Public Works)

BACKGROUND: *Fairview Street from Hwy 24 south to Sheridan Ave was identified as having a failing pavement condition index in the 2018 City of Woodland Park Pavment Management Plan. As one of the main north/south roadways through the City, this project has been selected for design in 2024 and reconstruction in 2025. The design includes roadway, sidewalk, and drainage improvements, as well as a traffic study and sineage analysis to determine the correct speed for the roadway and the optimal placement of traffic signs. The design work will be completed by the end of 2024, so that the City can go out to advertisement in January of 2025 to solicit the most competitive bids. The design effort fee is \$145,320, and staff is requesting a 10% contingency for a total approval amount of \$159,852 (to be manged by staff) in the event additional design effort are required during the design phase.*

RECOMMENDATION: Approve the agreement Between Baseline Engineering Corporation and the City of Woodland Park for Professional Engineering and Survey Services for Fairview Street Design in the amount of \$159,852

ATTACHMENTS: 1. BEC Fairview St Proposal 2024.04.18

April 18, 2024
Revised May 14, 2024

Sam Kozurek
Associate Project Manager
Public Works
City of Woodland Park

**RE: Proposal for Professional Engineering and Surveying Services
Fairview Street – Woodland Park, CO**

Dear Mr. Kozurek,

We are pleased to submit this proposal for the Civil Engineering, Surveying, Traffic, and Geotechnical services for improving Fairview Street between Midland Avenue and Sheridan Avenue. Per the 2018 Pavement Management Plan, this section of roadway was identified to have a Pavement Quality Index (PQI) between 20-50 which is rated as Poor. The management plan recommended that portions of this roadway receive a Full Depth Reclamation (FDR) with new asphalt pavement that is 4" thick. In addition to the new paving, proposed improvements include steepening of the asphalt cross slope to 3%, curb & gutter to be installed on both sides of the street, widening of Fairview between Midland Avenue and Pikes Peak Avenue to include parallel parking stalls, parking lot improvements at Cavalier Park and new accessible ramps at the intersections with Grace Avenue, Pikes Peak Avenue, Chester Avenue, Foster Avenue, and Sheridan Avenue.

On the following page is a Scope of Services and a proposal that outlines the major issues and approval process requirements. We appreciate the opportunity to assist and we look forward to working with you on this project.

Sincerely,
Baseline Engineering Corporation

A handwritten signature in blue ink, appearing to read "Mark Sundstrom".

Mark Sundstrom, PE
Business Office Leader
Mark.Sundstrom@baselinecorp.com
Cell: 303-525-7397
cc. Noah Nemmers

A.1 SCOPE OF SERVICES AND PROJECT UNDERSTANDING

This proposal is for the Civil Engineering, Surveying, Traffic, and Geotechnical services associated with improving Fairview Street between Midland Avenue and Sheridan Avenue. Per the 2018 Pavement Management Plan, this section of roadway was identified to have a Pavement Quality Index (PQI) between 20-50 which is rated as Poor. The management plan recommended that portions of this roadway receive a Full Depth Reclamation (FDR) with new asphalt pavement that is 4" thick. In addition to the new paving, proposed improvements include steepening of the asphalt cross slope to 3%, curb & gutter to be installed on both sides of the street, widening of Fairview between Midland Avenue and Pikes Peak Avenue to include parallel parking stalls, and new accessible ramps at the intersections with Grace Avenue, Pikes Peak Avenue, Chester Avenue, Foster Avenue, and Sheridan Avenue. The following proposal gives a basic description of the scope of services anticipated for the entitlements as well as for providing civil engineering design services.

RIGHT-OF-WAY SURVEY – TOPOGRAPHIC MAPPING – UTILITY DESIGNATION \$21,000

We will locate improvements, establish Right-of-Way, and show locations of known underground and overhead utilities.

- Control Work – Horizontal Control Datum will be based on the Colorado Central Datum; Vertical datum will be based on NAVD 88.
- Improvement – Above Ground features will be surveyed along the alignment outlined in the Project Location.
- Utility – Surveying of locates, markings, and visible appurtenances within the project limits, including invert elevations of storm and sanitary manholes.
- Right-of-Way – Right-of-Way will be established/defined by the existing roadway features, GIS, and found survey monumentation.
- Parcel mapping
- CADD drawing – Consultant will map all survey data collected creating a CADD drawing in Civil 3D 2022.
- The consultant shall provide all traffic control and survey services associated with this effort.
- Topographic Survey included in the area as describe above in the Statement of Services
- Legal descriptions and exhibits for ROW acquisitions are excluded but can be done as an “add service” for \$1000 each
- Surveying the boring locations to determine the ground surface elevation after completion of the Geotechnical Engineer’s fieldwork is included in this scope.

GEOTECHNICAL EVALUATION SERVICES \$12,870

Geotechnical services will be provided by Vivid Engineering Group, Inc.

The purpose of our geotechnical evaluation services will be to explore and evaluate the subsurface conditions at various, evenly-spaced, accessible locations along this segment of Fairview Street per City of Woodland Park requirements. Based on our subsurface information, we will provide a discussion of subsurface conditions and construction recommendations, as applicable.

Based upon the information provided to us about the project and our knowledge of the site, our geotechnical evaluation scope of services will include the following:

Task 1 - Geotechnical Field Activities

- Work with Baseline Engineering and the City of Woodland Park to obtain access to the sites for fieldwork activities, including submitting a work in the right of way permit to the City of Woodland Park. We anticipate a permit fee will not be charged for this project, therefore this estimated cost has been excluded.
- Perform a visual site reconnaissance to observe existing site conditions and establish safety procedures.
- Field-locate the borings and notify the Utility Notification Center of Colorado (UNCC)/Colorado 811 one-call system to have existing public utilities located and marked in the vicinity of the proposed boring locations.
- Provide Traffic Control Services during drilling activities in the right of way.
- If required by utility owners, we can have potholing performed to verify utility locations in the vicinity of geotechnical borings. However, for the purposes of this proposal, potholing is not included. Therefore, additional scope/fee beyond that provided herein would be required if potholing is deemed required by utility owners. This requirement will not be known until utility locates are requested prior to drilling.

Subsurface Exploration

The following subsurface exploration program will be performed under the observation of a qualified geologist/representative of the geotechnical engineer:

Boring Location	Number of Borings	Proposed Maximum Boring Depth (feet, bgs)	Estimated Drilled Footage (feet)
Fairview Street (spaced approximately 250 feet apart)	10	5 feet or refusal, whichever occurs first	50
Total Estimated Drilled Footage (feet)			50

Task 2 - Geotechnical Laboratory Testing

Laboratory testing will be performed on selected soil samples in accordance with City requirements and recognized standards and local practice and will generally include the following, subject to change based on the subsurface conditions encountered.

Laboratory Test Type
Gradation Analysis / Atterberg Limits
Moisture Content / Unit Weight
R-Value
Water-Soluble Sulfates

Anticipated Subsurface Conditions

Based on a review of geologic mapping and our experience in the area, the site is anticipated to comprise variable thicknesses of sand and clay alluvium and/or fill soils underlain by sandstone of the Fountain Formation. Depths to bedrock are variable in this area and are not anticipated to be encountered within 5 feet below the existing ground surface.

The borings are planned to be advanced with standard, truck-mounted drill rig equipped with continuous flight auger, and drive samples (California-type samplers) will be collected at regular intervals to the proposed depths or refusal, whichever occurs first. Bulk samples will also be collected.

Groundwater (if any) will be measured during drilling and at the completion of drilling. Upon completion of drilling, borings will be backfilled and patched in general accordance with City of Woodland Park specifications.

Task 3 - Geotechnical Analysis and Report Preparation

We will perform engineering analysis and evaluation of the resulting field and laboratory data for use in preparing geotechnical engineering recommendations for the proposed project. We will prepare a report containing our findings, conclusions, and recommendations. One electronic (PDF) copy of the report will be presented to Baseline Engineering and will contain the following:

- A description of the proposed project, including a description of the surface and subsurface site conditions encountered during our field investigation.
- A Boring Location Plan showing the approximate boring locations.
- Boring logs that provide visual and laboratory soil classifications, relative density information, select laboratory testing, major changes in the soil type, and groundwater elevation, as applicable.
- Laboratory test results. An R-value may be performed on a mixed sample of asphalt millings and base/subgrade materials depending on if the existing asphalt pavement will be milled and mixed as part of the full depth reclamation (FDR).
- Discussion of subsurface soil and groundwater conditions encountered including a discussion of site geology.
- Conclusions pertaining to feasibility of the proposed construction, impacts of geotechnical and geologic features on the proposed construction, and opinions on management of groundwater.
- Recommendations related to the geotechnical aspects of site preparation and earthwork.
- Recommendations for flexible pavement section thickness design in general accordance with the City of Woodland Park specifications.
- Recommendations related to the geotechnical aspects of site preparation, roadway embankment construction, and engineered fill.
- Opinions on management of groundwater.
- Appendices that summarize the field investigation and laboratory testing programs.

TRAFFIC EVALUATION

\$15,950

Traffic services will be provided by CivTrans Engineering, Inc.

The following scope is associated with completing a traffic evaluation and letter for the proposed roadway improvement project.

Task 1 – Coordination

A kickoff meeting with the City of Woodland Park will be conducted to confirm the scope of work, objectives, schedule and deliverable expectations. Up to five (5) additional 1-hour meetings beyond the kickoff meeting are included, which are assumed to be virtual meetings. Attendance (virtual or otherwise) at project meetings, agency meetings or other meetings associated with completing the traffic evaluation (beyond the kickoff meeting) will be billed at an hourly rate of \$150 per hour not to exceed 5.0 hours (\$750).

Task 2 – Data Collection

The appropriate data will need to be collected in order to conduct the traffic analysis. Intersection turning movement counts will be collected at the three intersections that are being considered for a change in traffic control. Turning movement counts will be collected for 16-hour periods (6:00 AM to 10:00 PM) during a weekday at the intersections listed below.

- Fairview Street & Pikes Peak Avenue
- Fairview Street & Chester Avenue
- Fairview Street & Foster Avenue

Speed data will be collected along a segment of Fairview Street where traffic is generally free-flowing for a 7-day duration. Intersection crash data within the study area for the most recent three (3) years (if available) will be provided by the City.

A site visit is planned to collect other surrounding transportation system information and observe existing traffic patterns. Any proposed development(s) or traffic changes that will impact the traffic volume along Fairview Street in the future will be disclosed by the City and background information will be provided. Should any additional data collection (traffic counts) be required as a result of input from the City or any referral agencies, an additional services agreement will be prepared for the added cost and presented for approval.

Task 3 – Analysis

Volumes: The traffic counts will be reviewed to establish the existing condition peak hour and top eight (8) hourly volumes throughout the day. A background growth rate will be established from historic counts (if available) and through coordination with the City of Woodland Park. Background projects (approved projects that have not yet developed) will be identified through coordination with the City and included in the background traffic model. Combining the existing volumes with the background growth rate and background projects trips will develop the appropriate future analysis condition volumes.

Operational Capacity: The volumes will be utilized in performing intersection capacity (level of service) analyses at the study area intersections for the existing condition and each of the future conditions during the weekday morning and afternoon peak periods. The analysis will be conducted using Highway Capacity Manual methodologies as implemented in the Synchro traffic analysis software.

All-Way Stop-Control Warrant Evaluation: Justification for installing or removing all-way stop-control at an intersection is largely based on warrants established in the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD provides five separate warrants for all-way stop control, which include crash experience, sight distance, transition to signal control yield control at a circular intersection, 8-hour volume, and other factors. The three study intersections will be evaluated for all-way stop control utilizing these MUTCD warrants and the collected data (counts, crash, geometry, etc.).

Speed Study: The 7-day speed data will be plotted and the 85th percentile speed will be reported. The posted speed limit should be within five (5) mph of the 85th percentile speed. Geometric limitations, sight distance, and pedestrian and bicycle safety will be included and considered for increasing the speed limit.

Coordination with the civil design engineer may be required to evaluate roadway geometry and intersection/driveway sight distances.

Other Analysis (Exclusions): At this time, it is not known what other analyses may be required by the City or other review agencies. Therefore, the following could be required, but were not included in this proposal.

- Additional Intersection Counts and Evaluation
- Intersection Crash (Safety) Analysis
- Queuing Analysis
- Pedestrian / Bicycle Infrastructure Evaluation
- Attendance at project meeting(s) or neighborhood meeting(s) beyond what is included in the scope of services

Task 4 — Documentation

The data methodologies and analysis results will be compiled into a traffic letter along with findings and recommendations. The traffic letter will be provided electronically for internal (design team) review prior to submittal to the City of Woodland Park. If the project team has comments, changes can be made within a day or two typically. Once all comments are addressed, a draft submittal can be made to the City. The City may issue the letter to other agencies as a referral for their input. The City and other review agencies may take four (4) weeks or more to review the letter. Should they have any comments, changes can be made within a day or two depending on the nature of the comments. After addressing comments, a final (stamped and signed) traffic letter will be submitted to the City and project team for final approval.

CIVIL CONSTRUCTION DOCUMENTS

\$55,000

1. Serve as the civil engineering representative for the project and provide professional engineering consultation and advice during the Civil Construction Document phase of the project.
2. Prepare a Site Layout Plan and Horizontal Control Plan showing lot lines, setbacks, easements, sidewalks, curb and gutter.
3. Prepare paving sections and details based on final pavement design to be provided by the Geotechnical Engineer and final roadway sections in coordination with the City's Pavement Management Plan.
4. Prepare Plan and Profile sheets with cross sections for Fairview Street.
5. Prepare a Detailed Grading Plan to define final grades and grade breaks.
6. Prepare Striping and Signage plans for the local streets as well as the improvements to Fairview Street.
7. Prepare Phased Erosion Control Plans. We will identify temporary Best Management Practices that are to be implemented during construction to minimize erosion and control sediment transport during initial and final stabilization.
8. Prepare construction detail sheets indicating special details as well as standard City of Woodland Park details as required.

Baseline will prepare an Engineer's Estimate of Probable Cost (EOPC) for use in budgeting and comparing Bids. One meeting with the Public Works director is included in this phase of the project. Coordinate with CDOT and submit application for CDOT Access Permit.

FINAL DRAINAGE REPORT

\$9,500

Baseline will prepare a Final Drainage report in compliance with the Woodland Park standards. It is understood that a Final Drainage report will be submitted and reviewed concurrently with the Design Development Drawings. To clarify, a Preliminary Drainage Report is not included with this scope of work, only a Final.

The Final Drainage Report will include the following tasks:

- Use the project grading plan to detail an existing and proposed drainage basin map. The basin map will divide the project site into smaller sub basins to quantify peak flows at particular design points.
- Runoff coefficients, rainfall intensity, and time of concentration calculations will be done as part of the Land Use Analysis to begin the Rational Method Calculations.
- The Land use data will then carry into the Rational method calculations to determine the peak runoff at each design point. Peak runoff will be determined for both the existing (historic) and proposed conditions. The Mile High Flood District's (MHFD) SF-1, SF-2 and SF-3 forms will be used.
- The determined stormwater runoff values will be used to design the conveyance systems of the site, such as inlets and swales. Hydraulic analysis is performed to determine the size and quantity of each inlet at each design point. The MHFD's UD-Inlet and UD-BMP forms will be used to design the conveyance features. Surface flow that is captured in inlets will then enter the underground storm system
- An analysis of street capacity will be complete in conjunction with the inlet design to determine the location and spacing of storm inlets. The storm inlets will be sized based on the determined runoff calculations. Once the inlets are sized baseline will be able to compete the hydraulic model required to size the proposed storm pipes.
- Hydraulic analysis will then be performed on the underground storm system. The analysis is performed using StormCAD and a hydraulic model will be created for both the minor and major storm events.
- It is anticipated that no water quality or detention basins will be added as part of the project.
- Once all analysis is complete and the system is designed, baseline will complete the written narrative portion of the Final Drainage Report. The written narrative will describe and detail the findings in the above steps.
- The Narrative, Calculations, and Drainage Maps will then be submitted to Woodland Park for review. It is anticipated that 3 rounds of review will be required to obtain approval. The fee listed above includes the time required to respond to agency comments.

BIDDING AND NEGOTIATION

\$3,000

BASELINE will manage the bid process by initially uploading the bid package to the Bidnet portal. We will ensure that all contractor questions received through the portal are promptly addressed. Additionally, BASELINE will facilitate the bidding phase by participating in one site visit with potential contractors. Our project manager will attend this visit to provide technical guidance and address any on-site queries from contractors. Once all bids are submitted, our team will thoroughly review the pricing proposals from all subcontractors. This review will focus on assessing each subcontractor's cost competitiveness, capability, and past performance. Based on these criteria, BASELINE Engineering will compile bids and make a well-informed recommendation for the award.

CONSTRUCTION ADMINISTRATION

\$8,000

1. BASELINE shall provide responses to Civil Engineering related Requests For Information (RFI) in the post-bid and construction phases. We anticipate responding up to three (3) RFIs.
2. BASELINE shall provide review and responses to Civil Engineering related shop drawing submittals in the post-bid and construction phases.
3. BASELINE shall make a site visit upon substantial completion of construction and generate a Punch List for Civil Engineering related items. BASELINE shall also perform a final walk-through so ensure that Punch List Items have been corrected.

4. After construction is complete, BASELINE will prepare final As-Built record documents. BASELINE requests that the Contractor provide a stamped and signed survey for BASELINE to prepare the As-Built Record Drawings from.

ADDITIONAL TASKS

T & M NOT TO EXCEED \$20,000

This hourly not-to-exceed phase is intended to account for minor changes in scope along with additional coordination and meetings during design and construction administration.

Total Fee Estimate = \$124,320 + (\$20,000 T&M) = \$145,320

In addition to the professional services set forth above, Baseline shall be compensated 110% of Reimbursable Expenses such as printing, postage, messenger services. Baseline shall be compensated 110% of any subcontractor fees, and application fees if applicable.

A.2 PROJECT SCHEDULE

Baseline will schedule work upon contract execution. The overall project delivery schedule will be produced with the input from the project team once the project is commenced.

A.3 PROJECT DELIVERABLES

Ongoing coordination with the project team, City of Woodland Park staff, and referral agencies during the development review process.

1. Survey
2. Geotechnical Analysis and Report
3. Traffic Evaluation
4. Civil Construction Documents
5. Engineer's Opinion of Probable Cost (EOPC)
6. Drainage Letter
7. CDOT Access Permit

A.4 ADDITIONAL SERVICES (EXCLUSIONS)

- I. **Outside Services:** Baseline shall not be responsible for undertaking tasks assigned to or expected of another consultant, nor shall they be held liable for providing explanations or rectifying errors made by other consultants who may lack familiarity with local codes and jurisdiction requirements. The Client acknowledges and agrees that any reliance on such consultants and their work is solely at their own risk. The Client shall ensure that all necessary consultants and contractors possess adequate knowledge of local codes and jurisdiction requirements to fulfill their respective responsibilities. Such coordination can consume a significant amount of time and may require additional billing.
- II. **Utility Connections:** The responsibility for connecting utilities (water, sewer, gas, electricity) to the site is excluded, except as explicitly stated above. The sizing and location of utilities will be determined with input from MEP. Dry utility coordination can be provided as an Additional Service on an hourly basis.
- III. **Non-Plat Easements:** Easements not explicitly stated will be prepared as an Additional Service on an hourly basis. An estimate will be provided prior to performing the work.

- IV. **Survey Monumentation:** The restoration of lost BLM corners, re-setting of Range Points (if required), and interior property corners will be bid as a separate cost. This may include traffic control. The need for this work will be determined after fieldwork is performed and reviewed by the local jurisdiction.
- V. **Submittal Items:** Submittal items such as fees, title work, previous documents by others, architectural elevations, and lighting plans should be provided by the client or other parties.
- VI. **Offsite Improvements:** The contract covers improvements within or immediately adjacent to the parcel. Offsite improvements, such as water, sanitary sewer, storm sewer, and roadways, are not included. Additional survey and project limits beyond what is explicitly noted are also excluded.
- VII. **Underdrain Improvement Plan:** An underdrain system is not anticipated. If the soils engineer determines it is required during the project, the Consultant will prepare a plan as an Additional Service.
- VIII. **Subsurface Conditions:** This contract excludes unexpected subsurface conditions encountered during construction that were not reasonably foreseeable based on available site information.
- IX. **Changes in Regulations:** The contract assumes compliance with existing regulations and codes. Any additional costs or modifications resulting from changes in regulations, codes, or standards during the project duration are the client's responsibility.
- X. **Educating Client Personnel:** Any additional effort required to bring new personnel up to speed on project history, requirements, and related information shall be considered as an extra service and will be subject to additional charges. The client acknowledges that such efforts may result in increased time and resources and agrees to compensate the service provider accordingly.
- XI. **Delay and Approval Timelines:** The contract assumes reasonable progress and timely approvals. Delays caused by factors beyond Baseline's control and exceeding the anticipated schedule may result in additional costs and time extensions.
- XII. **Plan Revisions:** The fees include **3** rounds of review based on comments from reviewing agencies. Consultant will proceed based on the site plan layout approved by the client. Revisions necessitated by changes directed by others, new design standards, changes in reviewers, or additional information not previously provided shall be subject to additional compensation and time extensions as agreed upon between the parties. This exclusion aims to safeguard the consultant from unforeseen circumstances related to changes in reviewers and excessive comments while ensuring reasonable boundaries on the number of submittals.
- XIII. **Building Permitting Process:** Depending on the jurisdiction and their process, responsibility for obtaining and coordinating building permits and permitting comments can vary. Baseline can assist with the Building Permit process, but it is generally separate from site entitlements and is therefore an exclusion that may require additionally defined scope billing.
- XIV. **Miscellaneous Exclusions:** The following items are specifically excluded from this contract:
 - Phasing Plans
 - Verifying the accuracy of the work of others
 - Bidding of project work
 - Environmental work
 - Well Permitting
 - Engineer's Opinion of Probable Cost & Quantities
 - Landscape Plans
 - Architectural Site Plan (Used for Building Permit)
 - Structural design (foundations, structures, walls, concrete slabs, stairs, etc.)
 - As-Built Survey & Plans (a follow-up proposal will be provided once design is complete)
 - Traffic study
 - Lighting Plan

- Sand Oil Separator design
- Subsurface Utility Engineering
- Review of a Development Agreement
- Mineral interest research and notice
- Variance and Alternative Standard Requests
- Client will take the lead on assembling and submitting applications
- Client will attend and direct all public hearings
- Construction Surveying
- Construction Observation Services
- Road centerline alignment shift
- Structural detailing for modifications to concrete box culverts
- Any items not specifically described in the scope of work in Section A.1

STANDARD OF CARE

Baseline's services shall be performed in a manner consistent with the care and skill ordinarily exercised by professionals practicing in the same locality and specialty under the same or similar conditions, subject to site conditions and time limits and financial and physical constraints imposed by Client. Baseline makes no warranties or guaranties, either express or implied, of any kind, nature or type whatsoever (including those of condition, merchantability, suitability and fitness for a particular purpose or use) regarding the services. Baseline expressly disclaims all such warranties or guaranties. The foregoing is collectively referred to as the "Standard of Care."

PAYMENT PROVISIONS

Fees will be contracted as Fixed and invoices will be billed on a monthly basis. Payment is due upon receipt.

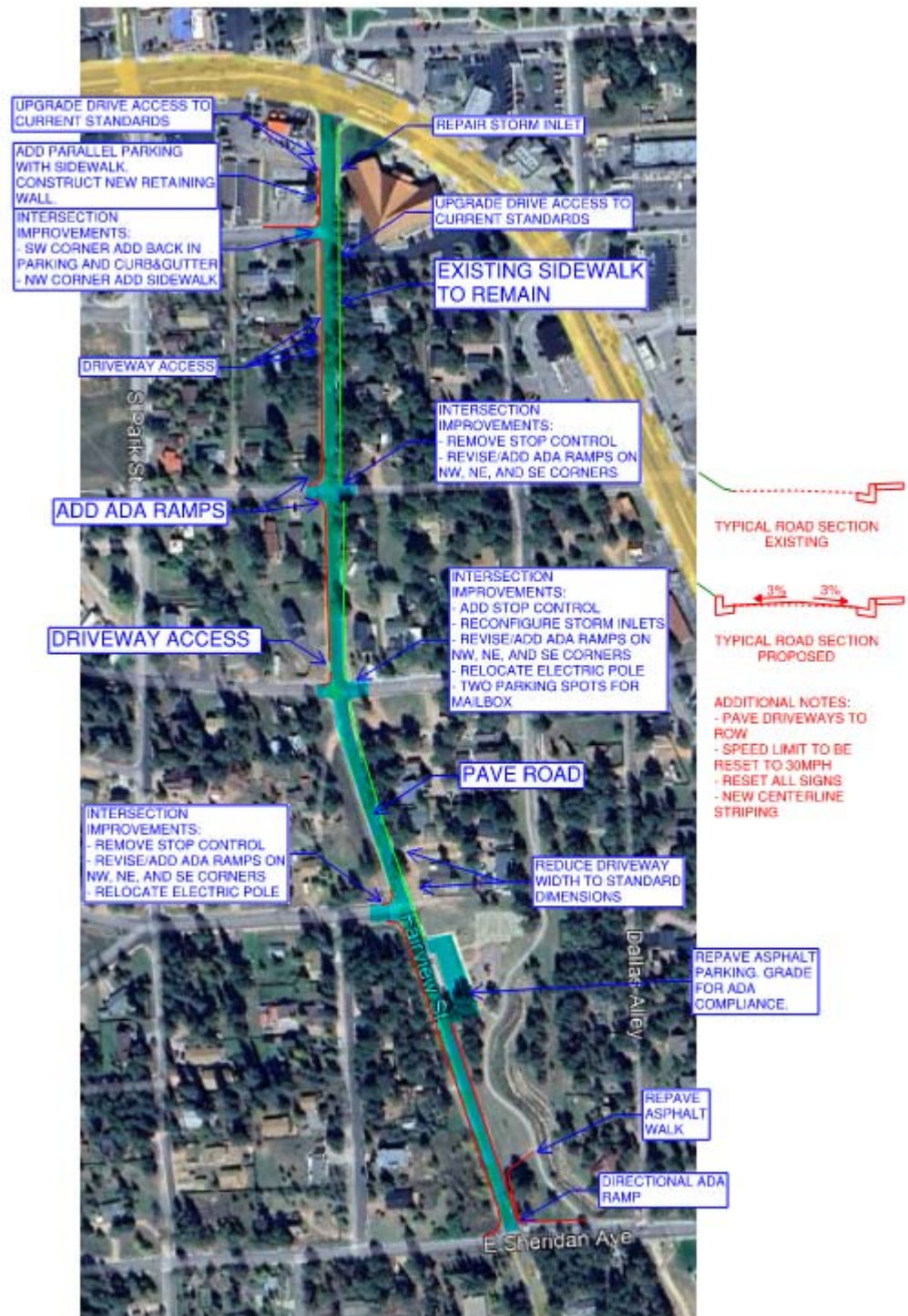
A 3% discount is included in the cost of services above for payment in compliance with this Agreement as follows: payment to Baseline shall be in the form of a check or Electronic Funds Transfer (contact Baseline for EFT information) **payable to Baseline Engineering Corporation, PO Box 312, Broomfield, CO 80038-0312**. Other payment arrangements must be approved in advance by Baseline and may be subject to forfeiture of the discount and/or additional terms and conditions including, without limitation, a personal guaranty.

BASIS OF AGREEMENT (CLIENT RESPONSIBILITIES)

BASELINE will receive the following documents from CLIENT or others

- Current title commitment, in association with ALTA survey
- Ownership and Encumbrance Report
- Proof of Ownership or Deed
- Environmental reports
- Mechanical, Electrical & Plumbing coordination items related to lighting, fire suppression, etc.
- Client will pay all permitting and recordation fees associated with this application.
- Client will attend and direct all Public hearings unless a T&M contract amendment has been executed to release Baseline to prepare for, conduct, and follow up to hearings as necessary.
- Client will take the lead on assembling development applications
- Client to secure services of Landscape, Irrigation, Lighting, and Architectural Consultants if needed.

PROJECT LOCATION MAP





STAFF REPORT

TO: Mayor Case and City Council

FROM: Ben Schmitt, City Engineer

DATE: June 27, 2024

SUBJECT: Agreement between RME Ltd, LLL dba Elite Surface Infrastructure and the City for Woodland Park in the amount of \$3,577,953 for Infrastructure improvements on Lake Avenue, Dewell Road, and Pine Ridge. (Presenter Ben Schmitt, Director of Public Works)

BACKGROUND: The following goals and actions were identified in the 2030 comprehensive plan: Transportation Action 1.3.1 Implement Pavement Management Plan, Transportation Objective 1.3 *Complete Streets*, and Drainage Action 1.1.1 *Implement Stormwater Master Plan*. To achieve these goals, staff has identified three roadway projects in 2024 to complete which will include a combination of roadway, drainage, sidewalk, and water infrastructure improvements. These projects were specifically chosen for their recommended treatment year in the 2018 pavement management plan, their identified deficiencies in the 2015 Stormwater Master Plan, the presence of galvanized lines which need to be replaced per State requirements, and the opportunity to install sidewalks and multimodal infrastructure where there currently is none. These three projects are Lake Avenue, Dewell Road, and Pine Ridge.

Using plansets developed from Wilson and Co (one of the City's on Call Engineering Firms) in 2023, Staff solicited competitive bids through the City's Online procurement portal for all three projects. Staff received three competitive bids back, and the low bidder was Elite Surface Infrastructure in the amount of \$3,252,684.85. Staff is asking for the approval of \$3,577,953 which includes a 10% contingency to be managed by Staff if additional scope is discovered/required during construction.

RECOMMENDATION: Approve the Agreement between RME Ltd, LLL dba Elite Surface Infrastructure and the City for Woodland Park in the amount of \$3,577,953 for Infrastructure improvements on Lake Avenue, Dewell Road, and Pine Ridge.

ATTACHMENTS:

1. ESI PP Bond
2. ESI Semi-Executed Contract



Employers Mutual
Casualty Company

Bond No. S045475

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That We, RME Ltd., LLC dba Elite Surface Infrastructure

115 Inverness Drive East, Suite 100, Englewood, CO 80112

(hereinafter called "Principal"), as Principal, and the EMPLOYERS MUTUAL CASUALTY COMPANY, a corporation organized and existing under the laws of the State of Iowa with its principal office in the CITY OF DES MOINES, IOWA,

and authorized to transact business in the State of Colorado as Surety, are held and firmly

bound unto City of Woodland Park

220 West South Avenue, Woodland Park, CO 80866

(hereinafter called "Obligee"), in the penal sum of Three Million Two Hundred Fifty Two Thousand Six

Hundred Eighty Four 85/100

DOLLARS (\$ 3,252,684.85), good and lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally firmly by these presents.

SEALED, with our seals and dated 18th day of June, 20 24.

WHEREAS, the above bounden Principal has entered into a certain written contract with the above named Obligee,

dated the _____ day of _____, 20 _____, providing for the construction or supply of,

2024-204 Woodland Park Capital Improvement Project

Dewell, Lake & Pine Ridge

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein for the purpose of explaining but not of varying or enlarging the obligation.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bounden Principal shall well and truly keep, do and perform, each and every, all and singular, the matters and things in said contract set forth and specified to be by the said Principal kept, done and performed at the time and in the manner in said contract specified, and shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal, then this obligation shall be void; otherwise, to be and remain in full force and effect.

PROVIDED, HOWEVER, this bond is executed by the Surety, upon the express condition that no right of action shall accrue upon or by reason hereof, to or for the use or benefit of any one other than the Obligee named herein; and the obligation of the Surety is and shall be construed strictly as one of suretyship only.

WITNESS:

RME Ltd., LLC dba Elite Surface Infrastructure

Principal

By: [Signature]

(If Individual or Firm)

ATTEST:

[Signature]
(If Corporation)

Employers Mutual Casualty Company

Surety

By: [Signature]

Jennifer Naber

Attorney-in-Fact

Questions regarding this bond should be directed to the EMC H.O. Bond Department at 515-345-2689.



Employers Mutual
Casualty Company

Bond No. S045475

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That We, RME Ltd., LLC dba Elite Surface Infrastructure

115 Inverness Drive East, Suite 100, Englewood, CO 80112

(hereinafter called "Principal"), as Principal, and the EMPLOYERS MUTUAL CASUALTY COMPANY, a corporation organized and existing under the laws of the State of Iowa and authorized to transact business in the State of

Colorado (hereinafter called "Surety"), as Surety, are held and firmly bound unto the City of Woodland Park

220 West South Avenue, Woodland Park, CO 80866

(hereinafter called "Obligee"), in the penal sum of Three Million Two Hundred Fifty Two Thousand Six

Hundred Eighty Four 85/100 DOLLARS, (\$ 3,252,684.85), good and lawful money of the United

States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a certain written contract with the above named

Obligee, dated the _____ day of _____, 20 _____, providing for the

construction or supply of, 2024-204 Woodland Park Capital Improvement Project

Dewell, Lake & Pine Ridge

Which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, IF the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, then this obligation to be void; otherwise to remain in full force and virtue.

SIGNED and sealed this 18th day of June, 20 24.

WITNESS:

(If Individual or Firm)

ATTEST:

Donja Beyers
(If Corporation)

RME Ltd., LLC dba Elite Surface Infrastructure
Principal

By: John Doe

Employers Mutual Casualty Company

Surety

By: Jennifer Naber

Jennifer Naber Attorney-in-Fact



Questions regarding this bond should be directed to the EMC H.O. Bond Department at 515-345-2689.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation

4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

JENNIFER NABER

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond Principal:
Number Elite Surface Infrastructure

Obligee:
City of Woodland Park

S045475

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

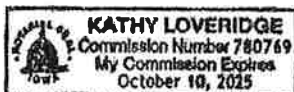
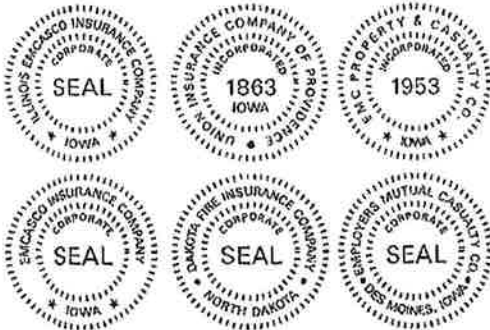
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
Scott R. Jean, President & CEO
of Company 1, Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

Kathy Loveridge
Notary Public in and for the State of Iowa

I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney Issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 18th day of June, 2024.

Ryan J. Springer
Vice President



CONSTRUCTION AGREEMENT

This **CONSTRUCTION AGREEMENT** (this “Agreement”) is entered into this _____ day of _____, 2024 by and between the City of Woodland Park, Colorado (hereinafter referred to as the “Owner”) and RME Ltd., LLC dba Elite Surface Infrastructure (hereinafter referred to as the “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 (defined below). The work is generally described as follows: Construction impo.

ARTICLE 2 THE PROJECT

- 2.01 The project for which the work under the Contract Documents may be the whole or only a part is generally described as follows 2024 Capital Improvements, Dwell, Lake and Pine Ridge. (the “Project”).

ARTICLE 3 ENGINEER

- 3.01 _____ shall serve as construction management engineer who is hereinafter called Engineer and who is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the work in accordance with the Contract Documents.

ARTICLE 4 WORKER WITHOUT AUTHORIZATION EMPLOYMENT

- 4.01 Contractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with workers without authorization to work within the State of Colorado. By entering into this Agreement, Contractor certifies that as of the date of this Agreement it does not knowingly employ or contract with anyone not authorized to perform work within the State of Colorado who will perform work under the public contract for services.

ARTICLE 5 CONTRACT TIMES

5.01 Time is of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

5.02 Days to Achieve Substantial Completion and Final Payment

- A. Contractor shall achieve Substantial Completion within _____ calendar days of the issuance by the Owner of a Notice to Proceed and shall finally complete the Work so that



it is ready for final payment within _____ calendar days of the issuance by the Owner of a Notice to Proceed.

5.03 Liquidated Damages

- A. Contractor understands and agrees that time is an essential condition of this Agreement. Contractor further understands and agrees that delay in completion of the project will cause Owner to suffer substantial losses and damages which cannot be measured, including without limitation the loss of revenues for services, loss of other revenue incidental to the operation of the facility, additional engineering, legal, accounting and administrative costs, reduced public confidence and adverse public relations which would reduce future revenues, and additional interest and financing costs and charges if the Work is not completed within the times specified above, plus any extensions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or mediation proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring proof of such losses and damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay two hundred fifty dollars (\$250.00) for each day that expires after the time specified above for Substantial Completion until the Work is substantially complete.
- B. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the contract time or any proper extension thereof granted by Owner, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay two hundred fifty dollars (\$250.00) for each day that expires after the time specified above for final completion and readiness for final payment until the Work is finally complete and ready for final payment.
- C. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and recover compensation for damages for nonperformance of this Contract.
- D. Any liquidated damages payable by Contractor may, at Owner's election be deducted from any amounts owed to Contractor. In the event no funds are due Contractor at a time when Contractor becomes liable to Owner for liquidated damages, then Contractor agrees to pay all accrued liquidated damages to Owner on the first (1st) day and on the fifteenth (15th) day of each month when Contractor is liable to Owner for liquidated damages. Permitting Contractor to continue and finish the Work or any part thereof after the deadline for completion of the Work shall not act as a waiver of these liquidated damages provisions.
- E. The aggregate liability of Contractor to pay liquidated damages pursuant to this Article shall not exceed an amount equal to fifty percent (50%) of the Contract Price. This Article shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Contract.
- F. In the event that this section conflicts with any other provisions regarding liquidated damages within the Contract Documents, this section shall control.

ARTICLE 6 CONTRACT PRICE

- 6.01 Owner shall pay Contractor Three Million, Two Hundred Fifty Two Thousand, Six Hundred Eighty Four dollars & Eighty Five Cents (\$3,252,684.85) for completion of the Work as full compensation for everything furnished and done by Contractor under this



Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

ARTICLE 7 PAYMENT PROCEDURES

7.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment to the Owner on a monthly basis, which shall be processed by the Engineer.

7.02 Progress Payments; Retainage

- A. Owner shall make progress payments towards the Contract Price, less five percent (5%) for retainage, on the basis of Contractor's Applications for Payment, as verified and recommended by Engineer, on or about the twenty-fifth (25th) day of each month during performance of the Work. In the Engineer's discretion, the Owner may withhold some or all of a progress payment where the Contractor's Application for Payment does not reflect the actual amount of the Work completed.

7.03 Final Payment

- A. Upon final completion and acceptance of the Work as recommended by the Engineer, Owner shall pay the remainder of the Contract Price, including any retainage previously withheld.

ARTICLE 8 PROJECT WARRANTIES

- 8.01 Contractor's warranties in respect of the Work (the "Project Warranties") are as follows: Contractor warrants to Owner that the Work shall be fit for its intended purposes, that materials and equipment furnished under this Agreement shall be of good quality and new, that all Work shall be free from defects and that all Work shall meet all of the requirements of this Agreement. Contractor shall furnish satisfactory evidence that it has met the Project Warranties. The Project Warranties shall commence on the date Contractor achieves final completion of the Work satisfactorily to Owner. If at any time within two (2) years after the date on which the Project Warranties commenced, any portion of the Work is found to be not in accordance with the Project Warranties, Contractor shall correct it promptly after receipt of notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition.

ARTICLE 9 INSURANCE

- 9.01 Insurance Requirements. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this Article and the insurance has been approved by the City Administrator or his designee. The City of Woodland Park shall be named as an additional insured. Certificates of insurance shall be issued prior to execution of the Notice to Proceed. Additionally, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance



required of subcontractor has been so obtained and approved. The following insurance shall be required:

- A. Commercial General Liability Insurance: At a minimum, combined single limits of \$1,000,000 per occurrence and \$1,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at \$1,000,000 per occurrence.
- B. Workers' Compensation and Employer's Liability: Workers' compensation insurance for all of Contractor's employees engaged in work at the site of the project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.
- C. Comprehensive Automobile Liability Insurance: Liability insurance with minimum combined single limits for bodily injury of not less than One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor's owned, hired and non-owned vehicles assigned or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Owner as Certificate Holder and name the Owner, and its elected officials, officers, employees, and agents as additional insured parties.

ARTICLE 10 CONTRACTOR'S REPRESENTATIONS

10.01 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 obtained and carefully studied (or assumes responsibility for having done so) any examinations, investigations, explorations, tests, studies, and data concerning conditions 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.
- E. 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.

- F. 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.
- G. 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor warrants and guarantees to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be defective within two (2) years of Substantial Completion.
- K. Contractor is organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

ARTICLE 11 CONTRACT DOCUMENTS

11.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement;
 - 2. Bidding Documents;
 - 3. General Conditions;
 - 4. Supplementary Conditions;
 - 5. Technical Specifications;
 - 6. Measurement and Payment Provisions;
 - 7. Construction Plans;
 - 8. Labor & Materials Payment Bond;
 - 9. Performance Bond;
 - 10. _____;
 - 11. _____; and
 - 12. Any written amendments or work change orders which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto.
- B. There are no Contract Documents other than those listed above in this Article.
- C. The Contract Documents may only be amended, modified, or supplemented by written agreement signed by both parties.

ARTICLE 12 PERFORMANCE BOND

- A. To secure performance of Contractor's obligations under this Agreement, the Contractor shall



provide the Owner with a Performance Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Performance Bond to the City for its review and approval. The City shall be authorized to draw upon the Performance Bond to correct any default by Builder under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Engineer. The Performance Bond shall be held by the City through the two (2) year Project Warranties period specified in this Agreement.

ARTICLE 13 MISCELLANEOUS

13.01 Indemnification

- A. The Contractor agrees to indemnify, save, and hold harmless the Owner, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind arising from or out of any negligent act, error, omission or other tortious conduct of the Contractor, its officers, subcontractors, employees, or agents in the performance or non-performance of its obligations under this Agreement.

13.02 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 Contract Documents.

13.03 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 Contract Documents.

13.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable by any court of competent jurisdiction 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.

13.05 Independent Contractor

The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee relationship with the Owner other than as a contracting party and independent contractor/ The Owner



shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors, and omissions insurance; or retirement account contributions.

13.06 No Waiver of Governmental Immunity

Nothing herein is intended as nor shall it be construed as a waiver of the protections and immunities afforded the Owner pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes, or pursuant to any other applicable laws.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Owner and Contractor have signed and executed this Agreement in duplicate on the date first written above. 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.

CITY OF WOODLAND PARK

Name: _____
Title: _____

ATTEST:

CONTRACTOR



Name: Jake Rae
Title: Vice President

ATTEST:



GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

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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*--Those performance or payment bonds which CONTRACTOR is obligated to obtain pursuant to Article 5 of these General Conditions.

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*--Drawings Engineer of Record, or OWNER duly designated representative.

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. *Lien*--Verified statements of claim filed with OWNER pursuant to the Colorado Revised Statutes.

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 City of Woodland Park, a home rule municipality of the State of Colorado and the entity 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. Includes Bidding requirements, Contract Forms, General Conditions of the Contract and Technical Specifications.

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" 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 complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction, which is \$50.00 per project manual and complete set of project drawings.

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 shall deliver to OWNER, with copies to each additional insured identified in the supplementary conditions, certificates of insurance (and other evidence of insurance which OWNER or an additional insured may request) which CONTRACTOR is 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. So long as no change to the Contract Price or the Contract Times results, 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 adoption 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.

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

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

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

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER 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 or should, in the exercise of reasonable diligence, have known of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Time 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.

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 materi-

als 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, 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.

H. 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 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.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase at its own expense and maintain such liability and other insurance in full force and effect at all times as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of the Work and 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 or uninsured subcontractors under any applicable law;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by personal injury liability;
5. Claims for damages other than to the CONTRACTOR's own work itself; 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 include but not be limited to:

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 products and 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 products and 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 *Property Insurance*

A. Unless otherwise provided in the supplementary conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. All deductible amounts with regard to such insurance shall be the responsibility of the CONTRACTOR. 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 policy 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 which is to be used for the Work, whether in-transit or elsewhere, and shall insure against at least the following perils and 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 specifically be 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. CONTRACTOR 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 5.05 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.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.05 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.

5.06 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.05 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.

5.07 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.05 will be adjusted with OWNER and made payable to OWNER as representative for, not as fiduciary for, the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.07.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 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 representative for, not as fiduciary for, 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.

5.08 *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.

5.09 *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 5.05 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-Equal"*

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 contractor's 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.

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.

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.

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. OWNER is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated in the Work (exemption No. 98-00361). Said Taxes shall not be included in the Contract Price or modifications to the Contract Price.

B. Prior to the purchase of any property to be incorporated into the Work, the CONTRACTOR and any subcontractor shall apply to the Department of Revenue, State of Colorado, for an exemption to be used for all Work done under this Contract (Form DR-172). All purchases for the Work shall use the exemption from sales tax.

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 caused or is alleged to be 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 or alleged to be 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 or others 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 is hereby given to CONTRACTOR that such other work will be performed; and
2. CONTRACTOR shall not be entitled to any amount or extent of any adjustment in the Contract Price or Contract Times as a result of such other work.

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 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 may, in OWNER's sole discretion, appoint a replacement engineer 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 *Payment*

A. OWNER shall make payments to CONTRACTOR promptly when they are due, subject to CONTRACTOR's satisfaction of all terms and conditions contained in section 14, and OWNER's right to withhold payment thereunder.

8.05 *Lands and Easements*

A. OWNER's duties in respect of providing lands 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 *Change Orders*

A. OWNER may execute Change Orders as indicated in paragraph 10.03. Upon OWNER's agreement to the terms thereof, OWNER is obligated to execute the Change Order.

B. OWNER will issue no Change Order or other form of order or directive requiring additional work to be performed, which work causes aggregate amounts payable under the Contract to exceed the amount appropriated for the original Contract, unless the CONTRACTOR is given written assurance by the OWNER that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered by remedy granting provisions of the Contract.

8.07 *Inspections, Tests, and Approvals*

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

8.08 *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.

8.09 *Undisclosed Hazardous Environmental Condition*

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

8.10 *Evidence of Financial Arrangements*

A. OWNER shall furnish CONTRACTOR with a statement that the amount of money appropriated is equal to or in excess of the contract amount.

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 shall not be required to make exhaustive or continuous inspections of the Site. 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 Contract Documents. 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. 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.

B. 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.

C. 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.

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

g. 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.

h. 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.

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

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

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

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

11.02 *Cash Allowances*

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

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

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

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

11.03 *Unit Price Work*

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

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

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

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;
 - b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

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

12.02 *Change of Contract Times*

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

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

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, 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. Except where the delay is due to the County or the County Work, 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 or acts of God.

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

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary

labor, material, and equipment. 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 or invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

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

3. The amount of retainage with respect to progress payments will be as provided 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 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;
 - 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 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; and (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens filed in construction with the Work.

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 the 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, excluding those sums withheld by OWNER pursuant to section 38-26-107, Colorado Revised Statutes.

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 those arising 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 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.

C. CONTRACTOR shall include in all contracts entered with any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by CONTRACTOR to perform any of the Work, a Termination for Convenience Clause similar to that listed in Section 15.03. Recovery by such any Subcontractor, any Supplier, or other individual or entity upon OWNER's termination for convenience shall be limited by the terms listed in Section 15.03.

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. In an effort to resolve any conflicts that arise during the construction of the Project or following the completion of the Project, all parties to this Agreement agree that all disputes arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

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 shall be governed and construed according to the law of the State of Colorado. All civil actions brought in relation to this Contract shall be filed in District Court, Teller County, State of Colorado.

17.06 *Addresses*

A. All notices, letters and communication directed to OWNER shall be addressed and delivered to: Ben Sheets, City Engineer, City of Woodland Park, 220 W. South Avenue, Woodland Park, Colorado 80863.

All notices, letters and communication directed to ENGINEER shall be addressed and delivered to:

C. The business addresses of CONTRACTOR given in the Bid Form and CONTRACTOR's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to CONTRACTOR will be delivered.

D. Either OWNER, CONTRACTOR, or ENGINEER may change his address at any time by an instrument in writing delivered to the other two.



STAFF REPORT

TO: Mayor Case and City Council

FROM: Ben Schmitt, City Engineer

DATE: June 27, 2024

SUBJECT: Agreement between the City of Woodland Park and Cosco Fire Protection for the amount of \$645,113 for HVAC and Fire Suppression Ute Pass Cultural Center (Presenter Ben Schmitt, Public Works Director)

BACKGROUND: To promote the health, safety, and comfort of the community and patrons of the Historic Ute Pass Cultural Center, a complete fire suppression and HVAC system was budgeted in the Capital Improvement plan under the 2024 Annual Budget. This system would include a sprinkler suppression system throughout the entire building, a new dual fuel (gas/electric) heating and cooling unit, and new fire curtains on the stage. The work is slated to be completed in the first quarter of 2025, however long lead time items need to be ordered early for the project.

Staff solicited bids through the City's online bid portal, and received one responsive bid back for \$560,968.00 from COSCO Fire Protection. Staff is asking for approval of \$645,113 which included a 15% contingency to be managed by staff.

RECOMMENDATION: Approve the HVAC and Fire Suppression Ute Pass Cultural Center contract between the City of Woodland Park and Cosco Fire Protection for the amount of \$645,113

ATTACHMENTS: 1. Semi-executed Costco Fire Contract



CONSTRUCTION AGREEMENT

This **CONSTRUCTION AGREEMENT** (this “Agreement”) is entered into this ____ day of _____, 2024 by and between the City of Woodland Park, Colorado (hereinafter referred to as the “Owner”) and COSCO Fire Protection (hereinafter referred to as the “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 (defined below). The work is generally described as follows: The contractor shall design and install a fire suppression system, and install an HVAC system at the historic Ute Pass Cultural Center. The HVAC system has been designed and approved through Pikes Peak Regional Building department, and the fire suppression design needs to be designed around this approved design. The City is looking for a single, general contractor to design, install, take over and obtain all permits the complete install of this project in the first quarter of 2025.

ARTICLE 2 THE PROJECT

- 2.01** The project for which the work under the Contract Documents may be the whole or only a part is generally described as follows:

Design and installation of the fire suppression system and the HVAC system at the Ute Pass Cultural Center [insert address] (the “Project”).

ARTICLE 3 ENGINEER

- 3.01** The Public Works Director or shall serve as construction management engineer who is hereinafter called Engineer and who is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the work in accordance with the Contract Documents.

ARTICLE 4 WORKER WITHOUT AUTHORIZATION EMPLOYMENT

- 4.01** Prior to the execution of this Agreement, Contractor shall certify to the City, by completing the Worker Without Authorization Addendum attached hereto, that at the time of certification, Contractor does not knowingly employ or contract with any worker without authorization who will perform work under this Agreement as well as other certifications therein contained.



ARTICLE 5 CONTRACT TIMES

5.01 Time is of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

5.02 Days to Achieve Substantial Completion and Final Payment

- A. Contractor shall achieve Substantial Completion within 365 calendar days of the issuance by the Owner of a Notice to Proceed, and shall finally complete the Work so that it is ready for final payment within 30 calendar days of the issuance by the Owner of a Notice of Completion. It is expected that a pause will occur within the contract time to wait for the delivery of the RTU, and then install and continue the Contract Time.

5.03 Liquidated Damages

- A. Contractor understands and agrees that time is an essential condition of this Agreement. Contractor further understands and agrees that delay in completion of the project will cause Owner to suffer substantial losses and damages which cannot be measured, including without limitation the loss of revenues for services, loss of other revenue incidental to the operation of the facility, additional engineering, legal, accounting and administrative costs, reduced public confidence and adverse public relations which would reduce future revenues, and additional interest and financing costs and charges if the Work is not completed within the times specified above, plus any extensions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or mediation proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring proof of such losses and damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay two hundred fifty dollars (\$250.00) for each day that expires after the time specified above for Substantial Completion until the Work is substantially complete.
- B. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the contract time or any proper extension thereof granted by Owner, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay two hundred fifty dollars (\$250.00) for each day that expires after the time specified above for final completion and readiness for final payment until the Work is finally complete and ready for final payment.
- C. Owner shall e-mail a written Notice to Cure to Charles Konecny when it anticipates seeking liquidated damages for reasons set forth in Article 5.03(A)-(B). Such Notice to Cure shall provide Contractor with 72 hours to cure after the date the Notice to Cure e-mail was sent. Owner shall only be required to send a Notice to Cure the first time it puts Contractor on notice of violation of Article 5.03 (A)-(B). If Contractor does not cure the issue(s) within



72 hours, Owner is not required to send any further Notices to Cure. This provision does not limit the ability of Owner to seek liquidated damages or the amount of liquidated damages to be sought except as expressly written in this Contract.

- D. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and recover compensation for damages for nonperformance of this Contract.
- E. Any liquidated damages payable by Contractor may, at Owner's election, be deducted from any amounts owed to Contractor. In the event no funds are due Contractor at a time when Contractor becomes liable to Owner for liquidated damages, then Contractor agrees to pay all accrued liquidated damages to Owner on the first (1st) day and on the fifteenth (15th) day of each month when Contractor is liable to Owner for liquidated damages. Permitting Contractor to continue and finish the Work or any part thereof after the deadline for completion of the Work shall not act as a waiver of these liquidated damages provisions.
- F. The aggregate liability of Contractor to pay liquidated damages pursuant to this Article shall not exceed an amount equal to fifty percent (50%) of the Contract Price. This Article shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Contract.
- G. In the event that this section conflicts with any other provisions regarding liquidated damages within the Contract Documents, this section shall control.

ARTICLE 6 CONTRACT PRICE

- 6.01 Owner shall pay Contractor five hundred sixty thousand, nine hundred sixty eight dollars and zero cents (\$560,968.00) for completion of the Work as full compensation for everything furnished and done by Contractor under this Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

ARTICLE 7 PAYMENT PROCEDURES

7.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment to the Owner on a monthly basis, which shall be processed by the Engineer.

7.02 Progress Payments; Retainage



- A. Owner shall make progress payments towards the Contract Price, less five percent (5%) for retainage, on the basis of Contractor's Applications for Payment, as verified and recommended by Engineer, on or about the twenty-fifth (25th) day of each month during performance of the Work. In the Engineer's discretion, the Owner may withhold some or all of a progress payment where the Contractor's Application for Payment does not reflect the actual amount of the Work completed.

7.03 Final Payment

- A. Upon final completion and acceptance of the Work as recommended by the Engineer, Owner shall pay the remainder of the Contract Price, including any retainage previously withheld.

ARTICLE 8 PROJECT WARRANTIES

- 8.01 Contractor's warranties in respect of the Work (the "Project Warranties") are as follows: Contractor warrants to Owner that the Work shall be fit for its intended purposes, that materials and equipment furnished under this Agreement shall be of good quality and new, that all Work shall be free from defects and that all Work shall meet all of the requirements of this Agreement. Contractor shall furnish satisfactory evidence that it has met the Project Warranties. The Project Warranties shall commence on the date Contractor achieves final completion of the Work satisfactorily to Owner. If at any time within two (2) years after the date on which the Project Warranties commenced, any portion of the Work is found to be not in accordance with the Project Warranties, Contractor shall correct it promptly after receipt of notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition.

ARTICLE 9 INSURANCE

- 9.01 **Insurance Requirements.** Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this Article and the insurance has been approved by the City Administrator or his designee. The City of Woodland Park shall be named as an additional insured. Certificates of insurance shall be issued prior to execution of the Notice to Proceed. Additionally, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

- A. **Commercial General Liability Insurance:** At a minimum, combined single limits of \$1,000,000 per occurrence and \$1,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at \$1,000,000 per occurrence.
- B. **Workers' Compensation and Employer's Liability:** Workers' compensation insurance for



all of Contractor's employees engaged in work at the site of the project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.

- C. Comprehensive Automobile Liability Insurance: Including coverage for all owned, non-owned, and rented vehicles with \$1,000,000 combined single limit for each occurrence.

ARTICLE 10 CONTRACTOR'S REPRESENTATIONS

10.01 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 obtained and carefully studied (or assumes responsibility for having done so) any examinations, investigations, explorations, tests, studies, and data concerning conditions 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.
- E. 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.
- F. 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.
- G. 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or



discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor warrants and guarantees to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be defective within two (2) years of Substantial Completion.
- K. Contractor is organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

ARTICLE 11 CONTRACT DOCUMENTS

11.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement;
 - 2. Bidding Documents;
 - 3. General Conditions;
 - 4. Supplementary Conditions;
 - 5. Technical Specifications;
 - 6. Measurement and Payment Provisions;
 - 7. Construction Plans;
 - 8. Labor & Materials Payment Bond;
 - 9. Performance Bond;
 - 10. Scope of Work;
 - 11. _____; and
 - 12. Any written amendments or work change orders which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto.
- B. There are no Contract Documents other than those listed above in this Article.
- C. The Contract Documents may only be amended, modified, or supplemented by written agreement signed by both parties.

ARTICLE 12 PERFORMANCE BOND

- A. To secure performance of Contractor's obligations under this Agreement, the Contractor shall provide the Owner with a Performance Bond in the amount of the full contract price. Prior to execution of this Agreement, the Contractor shall provide the form of the Performance Bond to the City for its review and approval. The City shall be authorized to draw upon the Performance Bond to correct any default by Builder under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Engineer. The Performance Bond shall be held by the City through the two (2) year Project



Warranties period specified in this Agreement.

ARTICLE 13 MISCELLANEOUS

13.01 Indemnification

- A. The Contractor agrees to indemnify, save, and hold harmless the Owner, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind arising from or out of any negligent act, error, omission or other tortious conduct of the Contractor, its officers, subcontractors, employees, or agents in the performance or non-performance of its obligations under this Agreement.

13.02 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 Contract Documents.

13.03 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 Contract Documents.

13.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable by any court of competent jurisdiction 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.

13.05 Independent Contractor

CONTRACTOR IS AN INDEPENDENT CONTRACTOR AND NOTHING HEREIN CONTAINED SHALL CONSTITUTE OR DESIGNATE THE CONTRACTOR OR ANY OF ITS EMPLOYEES OR AGENTS AS EMPLOYEES OR AGENTS OF THE OWNER.

13.06 No Waiver of Governmental Immunity



Nothing herein is intended as nor shall it be construed as a waiver of the protections and immunities afforded the Owner pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes, or pursuant to any other applicable laws.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Owner and Contractor have signed and executed this Agreement in duplicate on the date first written above. 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.

CITY OF WOODLAND PARK

Name: _____
Title: _____

ATTEST:

CONTRACTOR *Cosed Fire Protection, Inc*

Charles Kodecny
Name: Charles Kodecny
Title: District General Manager

ATTEST:

Heely An

WORKER WITHOUT AUTHORIZATION ADDENDUM

This Worker Without Authorization Addendum (hereinafter "Addendum") attached hereto and incorporated herein by this reference, is made to this Agreement by and between the City of Woodland Park (hereinafter "City"), a municipal corporation of the State of Colorado, and [REDACTED], (hereinafter "Contractor") dated this [REDACTED] day of [REDACTED], 2024.

Pursuant to Section 8-17.5-101, *et seq.*, C.R.S., the following provisions are hereby incorporated:

1. Contractor certifies that, at the time of executing this Addendum, Contractor does not knowingly employ or contract with a worker without authorization who will perform work under the Agreement and that Contractor will participate in the federal E-Verify Program or the Colorado Department of Labor and Employment's Employment Verification Program (hereinafter "CDLE's Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.
2. Contractor hereby agrees that it shall not:
 - a) Knowingly employ or contract with a worker without authorization to perform work under the Agreement; or
 - b) Enter into a contract with a subcontractor that fails to certify that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under the Agreement.
3. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or CDLE's Program.
4. Contractor is prohibited from using either the E-Verify Program or CDLE's Program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.
5. If Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with a worker without authorization, Contractor is required to:
 - a) Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and
 - b) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required by Subsection (5) (a) above the subcontractor does not stop employing or contracting with the worker without authorization; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the

subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

6. Contractor is required to comply with any reasonable request that CDLE makes in the course of an investigation that CDLE is undertaking pursuant to Section 8-17.5-102(5), C.R.S.

IN WITNESS WHEREOF, Contractor has executed this Addendum on the date first above written. By the signature of its representative below, Contractor affirms that it has taken all necessary action to authorize said representative to execute this Addendum.

CONTRACTOR Coseo Fire Protection, Inc

Signature: Charles Konecky
Name: Charles Konecky
Title: District General Manager
Date: _____

GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

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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*--Those performance or payment bonds which CONTRACTOR is obligated to obtain pursuant to Article 5 of these General Conditions.

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*--Drawings Engineer of Record, or OWNER duly designated representative.

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. *Lien*--Verified statements of claim filed with OWNER pursuant to the Colorado Revised Statutes.

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 City of Woodland Park, a home rule municipality of the State of Colorado and the entity 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. Includes Bidding requirements, Contract Forms, General Conditions of the Contract and Technical Specifications.

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" 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 complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction, which is \$50.00 per project manual and complete set of project drawings.

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 shall deliver to OWNER, with copies to each additional insured identified in the supplementary conditions, certificates of insurance (and other evidence of insurance which OWNER or an additional insured may request) which CONTRACTOR is 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. So long as no change to the Contract Price or the Contract Times results, 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 adoption 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.

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

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER 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 or should, in the exercise of reasonable diligence, have known of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Time 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.

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 materi-

als 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, 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.

H. 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 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.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase at its own expense and maintain such liability and other insurance in full force and effect at all times as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of the Work and 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 or uninsured subcontractors under any applicable law;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by personal injury liability;
5. Claims for damages other than to the CONTRACTOR's own work itself; 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 include but not be limited to:

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 products and 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 products and 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 *Property Insurance*

A. Unless otherwise provided in the supplementary conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. All deductible amounts with regard to such insurance shall be the responsibility of the CONTRACTOR. 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 policy 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 which is to be used for the Work, whether in-transit or elsewhere, and shall insure against at least the following perils and 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 specifically be 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. CONTRACTOR 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 5.05 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.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.05 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.

5.06 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.05 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.

5.07 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.05 will be adjusted with OWNER and made payable to OWNER as representative for, not as fiduciary for, the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.07.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 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 representative for, not as fiduciary for, 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.

5.08 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.

5.09 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 5.05 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-Equal"*

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 contractor's 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.

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.

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.

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. OWNER is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated in the Work (exemption No. 98-00361). Said Taxes shall not be included in the Contract Price or modifications to the Contract Price.

B. Prior to the purchase of any property to be incorporated into the Work, the CONTRACTOR and any subcontractor shall apply to the Department of Revenue, State of Colorado, for an exemption to be used for all Work done under this Contract (Form DR-172). All purchases for the Work shall use the exemption from sales tax.

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 caused or is alleged to be 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 or alleged to be 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 or others 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 is hereby given to CONTRACTOR that such other work will be performed; and
2. CONTRACTOR shall not be entitled to any amount or extent of any adjustment in the Contract Price or Contract Times as a result of such other work.

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 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 may, in OWNER's sole discretion, appoint a replacement engineer 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 *Payment*

A. OWNER shall make payments to CONTRACTOR promptly when they are due, subject to CONTRACTOR's satisfaction of all terms and conditions contained in section 14, and OWNER's right to withhold payment thereunder.

8.05 *Lands and Easements*

A. OWNER's duties in respect of providing lands 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 *Change Orders*

A. OWNER may execute Change Orders as indicated in paragraph 10.03. Upon OWNER's agreement to the terms thereof, OWNER is obligated to execute the Change Order.

B. OWNER will issue no Change Order or other form of order or directive requiring additional work to be performed, which work causes aggregate amounts payable under the Contract to exceed the amount appropriated for the original Contract, unless the CONTRACTOR is given written assurance by the OWNER that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered by remedy granting provisions of the Contract.

8.07 *Inspections, Tests, and Approvals*

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

8.08 *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.

8.09 *Undisclosed Hazardous Environmental Condition*

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

8.10 *Evidence of Financial Arrangements*

A. OWNER shall furnish CONTRACTOR with a statement that the amount of money appropriated is equal to or in excess of the contract amount.

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 shall not be required to make exhaustive or continuous inspections of the Site. 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 Contract Documents. 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. 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.

B. 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.

C. 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.

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

g. 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.

h. 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.

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

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

C. *CONTRACTOR's Fee*: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

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

11.02 *Cash Allowances*

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

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

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

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

11.03 *Unit Price Work*

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

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

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

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;
 - b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

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

12.02 *Change of Contract Times*

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

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

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, 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. Except where the delay is due to the County or the County Work, 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 or acts of God.

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

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary

labor, material, and equipment. 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 or invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

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

3. The amount of retainage with respect to progress payments will be as provided 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 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;
 - 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 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; and (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens filed in construction with the Work.

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 the 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, excluding those sums withheld by OWNER pursuant to section 38-26-107, Colorado Revised Statutes.

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 those arising 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 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.

C. CONTRACTOR shall include in all contracts entered with any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by CONTRACTOR to perform any of the Work, a Termination for Convenience Clause similar to that listed in Section 15.03. Recovery by such any Subcontractor, any Supplier, or other individual or entity upon OWNER's termination for convenience shall be limited by the terms listed in Section 15.03.

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. In an effort to resolve any conflicts that arise during the construction of the Project or following the completion of the Project, all parties to this Agreement agree that all disputes arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

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 shall be governed and construed according to the law of the State of Colorado. All civil actions brought in relation to this Contract shall be filed in District Court, Teller County, State of Colorado.

17.06 *Addresses*

A. All notices, letters and communication directed to OWNER shall be addressed and delivered to: Ben Sheets, City Engineer, City of Woodland Park, 220 W. South Avenue, Woodland Park, Colorado 80863.

All notices, letters and communication directed to ENGINEER shall be addressed and delivered to:

C. The business addresses of CONTRACTOR given in the Bid Form and CONTRACTOR's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to CONTRACTOR will be delivered.

D. Either OWNER, CONTRACTOR, or ENGINEER may change his address at any time by an instrument in writing delivered to the other two.

DOCUMENT 004113 - BID FORM - STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS SECTION IS FOR REFERENCE ONLY.

Bid will be through webpage <https://www.bidnetdirect.com/colorado/cityofwoodlandpark>
Bidnet # 0000331810 reference number

1.1 BID INFORMATION

- A. Bidder: Cosco Fire Protection, Inc.
- B. AIR CONDITIONING INSTALLATION; UTE PASS CULTURAL CENTER, CITY OF WOODLAND PARK.
- C. 210 E. Midland Avenue, Woodland Park, CO 80603
- D. Owner Project No. 22.FA.001
- E. Engineers Project No: 22048
- F. PLANT Engineering Consultants, Inc.
- G. 320 West Fillmore Street
- H. Colorado Springs, CO 80907
- I. Phone: 719.473.7077
- J. Email Address deaster@planteci.com
- K. Website: <http://planteci.com>
- L. Issued: 11/29/2022
- M. Complete Bid online filling out Value and all pertinent information. In addition to this, each contractor shall this form as a PDF as integral part of the bid to the following online address:
<https://www.bidnetdirect.com/colorado/cityofwoodlandpark>

1.2 CERTIFICATIONS AND BASE BID

- A. Base Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by PLANT Engineering Consultants, Inc. having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

1. Five Hundred Sixty Thousand Nine Hundred Sixty-Eight Dollars (\$ 560,968.00).
2. The above amount may be modified by amounts indicated by the Bidder on the attached Document 004322 "Unit Prices Form" and Document 004323 "Alternates Form."

1.3 BID GUARANTEE

- A. The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish surety as specified within 10 days after a written Notice of Award, if offered within 60

AIR CONDITIONING INSTALLATION
UTE PASS CULTURAL CENTER
CITY OF WOODLAND PARK, CO

days after receipt of bids, and on failure to do so agrees to forfeit to Owner the attached cash, cashier's check, certified check, U.S. money order, or bid bond, as liquidated damages for such failure, in the following amount constituting five (5%) percent of the Base Bid amount above:

1. Twenty-Eight Thousand Forty-Eight Dollars Dollars (\$ 28,048.00).

- B. In the event Owner does not offer Notice of Award within the time limits stated above, Owner will return to the undersigned the cash, cashier's check, certified check, U.S. money order, or bid bond.

1.4 SUBCONTRACTORS AND SUPPLIERS

- A. The following companies shall execute subcontracts for the portions of the Work indicated:

1. HVAC Work: MIC Heating & Air
2. Conrete Work: N/A - Removed from scope
3. Insulation Work: Mahler GC
4. Roof Work: Cobalt Roofing
5. Fire Protection Work: Self perform - Cosco Fire Protection
6. Controls Work: MIC Heating & Air
7. Electrical Work: Harris Electric

** All named subcontractors are preliminary and are subject to final confirmation at award time.*

1.5 TIME OF COMPLETION

Coordinate location of Contract Time requirement with option in paragraph below.

- A. The undersigned Bidder proposes and agrees hereby to commence the Work of the Contract Documents on a date specified in a written Notice to Proceed to be issued by Architect/Engineer and shall fully complete the Work within 365 days.

1.6 ACKNOWLEDGMENT OF ADDENDA

- A. The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

1. Addendum No. 1, dated _____
2. Addendum No. 2, dated _____
3. Addendum No. 3, dated _____
4. Addendum No. 4, dated _____

1.7 BID SUPPLEMENTS

- A. The following supplements are a part of this Bid Form are to be supplied on Bidnet by owner.
1. Bid Form Supplement - By owner.

See attached Cosco Fire proposal for specific scope inclusions, exclusions and qualifications.

AIR CONDITIONING INSTALLATION
UTE PASS CULTURAL CENTER
CITY OF WOODLAND PARK, CO

1.8 CONTRACTOR'S LICENSE

- A. The undersigned further states that it is a duly licensed contractor, for the type of work proposed, in City of Woodland Park and that all fees, permits, etc., pursuant to submitting this proposal have been paid in full.

1.9 SUBMISSION OF BID

- A. Respectfully submitted this 5 day of April 2024, <Insert year>.
- B. Submitted By: Cosco Fire Protection Inc (Name of bidding firm or corporation).
- C. Authorized Signature: [Handwritten Signature] (Handwritten signature).
- D. Signed By: Robert Strawn (Type or print name).
- E. Title: Branch Manager (Owner/Partner/President/Vice President).
- F. Witnessed By: _____ (Handwritten signature).
- G. Attest: [Handwritten Signature] (Handwritten signature).
- H. By: Kelly Crozier (Type or print name).
- I. Title: Office Manager (City Clerk).
- J. Street Address: 6395 East Platte Ave
- K. City, State, Zip: Colorado Springs, CO 80915
- L. Phone: 719.747.1440
- M. License No.: 24-S-08383
- N. Federal ID No.: 95-4208955 (Affix Corporate Seal Here).

END OF DOCUMENT 004113





COSCO Fire Protection

City of Woodland Park
220 W South Avenue
Woodland Park, CO 80866
Attn: Sam Kozurek

April 4, 2024

RE: Fire Sprinkler Proposal – Ute Pass Cultural Center – Woodland Park, CO

COSCO Fire Protection, Inc. is pleased to present you with the following lump sum proposal for the city's project number 22FA001 for the HVAC modifications, addition of the fire sprinkler system, and provision of new fire rated curtains at the Ute Pass Cultural Center Project at 210 E Midland Ave, Woodland Park, CO 80863. COSCO and its subcontract partners will provide the identified scope in line with our understanding of the project guidelines below. The scope of work is based on the bidding documents dated 2/09/2024 prepared by Plant Engineering Consultants. COSCO Fire Protection hereby proposes to furnish all labor, equipment and materials to perform all work as required, described in the following Scope of Work:

Bid Pricing as Proposed - \$560,968.00 – Five Hundred Sixty Thousand Nine Hundred Sixty-Eight Dollars

Scope of work:

- Provide the mechanical, electrical, and fire sprinkler upgrades to the building in line with the provided splice plans. Each section of work is to be provided by the appropriate trade partner.
- Cosco Fire Protection will self-perform the fire sprinkler scope of the project.
- The existing exterior entry where the new riser room is to be installed will be removed and patched. The old opening will be infilled and patched with stucco to match the existing building finish.
- Soffits will be created to conceal the sprinkler piping where applicable. There are several areas where the creation of soffits or the opening of existing ceilings to hide the new items may not result in the best finished product. Cosco will work with the owner to identify these areas in the design process.
- **Mechanical Scope Includes:**
 - 12.5 Ton Trane RTU
 - Power Exhaust & Economizer
 - Test and balance report for PPRD
 - Air Scrubber Enverid – HLR 100M
 - R12 wrap for outside duct
 - Low voltage control wiring
- **Fire Sprinkler Scope Includes:**
 - System design, materials selection, and installation methodologies will conform to the minimums NFPA 13 and local AHJ requirements, no specifications were provided.
 - **System Components**
 - **Supply piping** – Our work will start at a provided, minimum 4" flange inside the building at 1'0" AFF in the Northwest corner of the building as indicated on sheet FP003. Proper clearance from the walls and floors will need to be coordinated to ensure adequate space to make our supply connection in the room. A standard double check backflow device will be installed within 5 feet of the sprinkler system connection flange inside the building.
 - **NOTE:** The underground fire lines must be flushed and tested by the installation contractor in accordance with NFPA 13. Signed test certificates verifying the underground fire lines have been flushed and tested must be provided before we can make our connection to the underground fire line.
 - All underground work is by others.
 - **Fire Department Connection (FDC)** – We have included a standard brass exposed "Y" type Siamese FDC to be installed on the North outside wall within 10' of the fire riser.
 - **Water Supply** – Water supply data was unavailable prior to the bid. We have based this pricing on a minimum available water supply of 80 psi Static with 70 psi Residual flowing 1,500 GPM. If the actual water supply available at the project site is less than this basis, additional costs may apply.
 - **Standpipes** – Not required on this building
 - **Sprinkler System Protection** – A new "**Wet**" sprinkler system, designed in accordance with the applicable edition of NFPA 13 for Light Hazard Occupancies will be installed within the heated building envelope. Brass upright sprinklers will be installed in areas with exposed piping, and chrome semi-recessed pendent heads will be installed into the finished ceilings. (STD or EC coverage sprinklers may be used at COSCO's option. The majority of the piping in the building is planned to be routed exposed just beneath the existing gyp-board ceilings. Painting of the sprinkler piping, creation of soffits, or the concealment of the sprinkler piping in other ways is to be by others.
 - Flexible sprinkler connections and cast or malleable fittings to be used at COSCO's Option.
 - All materials and equipment will be UL/FM approved for fire protection and as allowed by NFPA 13.
 - Piping will be in accordance with the latest edition of NFPA 13, Tables identifying "Pipe or Tube Materials and Dimensions" and "Fittings Materials and Dimensions". Black steel piping will be utilized as well as grooved and threaded fittings.
 - Domestic or import materials may be used at Cosco's option.

6395 East Platte Avenue ●●● Colorado Springs, CO 80915 ●●● Phone: (719) 888-8211 ●●● www.coscofire.com

FIRE PROTECTION AND LIFE SAFETY SPECIALISTS



COSCO Fire Protection

City of Woodland Park
Ute Pass Cultural Center – Woodland Park, CO – 4/05/2024 (Continued)

Scope of work Continued:

- **Fire Sprinkler Scope Inclusions Continued:**
 - Building structure could not be observed in all areas due to the existing ceilings. Cosco's pricing is based on all above ceiling areas being constructed in a way to eliminate the need for sprinkler protection above ceilings. Any combustible structure areas are understood to be filled full of insulation or mitigated in another way to ensure sprinkler coverage is not required above the ceilings.
 - Sprinkler protection has been included for the storage area under the stage. Any storage placed under the stage will have to be done in a way to ensure the sprinkler coverage is not obstructed.
 - This bid is based on installation from a smooth, unobstructed finished floor.
 - The sprinkler heads are not included to be installed center of tile or quarter point.
 - COSCO will utilize ladders/electric lifts at our options to facilitate this retrofit in a safe and efficient manner. Protection of surfaces will be coordinated with general contractor (protection by general contractor).
 - Assumed core drilling through masonry walls, with no additional sleeving required. We plan to firestop our own penetrations through rated assemblies.
 - Work shall be performed during normal working hours: M-F 7:00 AM-4:00 PM.
 - An adequate and secured storage space for staging/laydown of materials will need to be provided within the project area.
 - Daily cleanup, removal/replacement of ceiling tile, as well as moving and replacement of desks/chairs/equipment to be provided by GC. Any required gypsum board ceiling cut and patch as required for efficient installation is to be provided by.
 - Bid is valid for 30 days and includes all permit fees, applicable taxes and our 1 year warranty
- Permits for all portions of scope with be pulled with the appropriate AHJ. Full AutoCAD backgrounds will need to be provided, at no cost, for the production of our submittal drawings.
- Owner will provide an adequate space for material layout area.
- Bid is valid for 30 days and includes all permit fees, applicable taxes and includes each trades standard 1-year warranty.

Exclusions/Qualifications:

- Standard estimated lead times on several trade's equipment can be 10 - 12 weeks or longer. Lead-time begins on date of contract signing & return of submittal brochures signed approvals. All fixture and equipment deliveries for lighting and gear are subject to manufacturers lead times and submittal approval.
- All work associated with underground water supply piping.
- Additional costs incurred due to unforeseeable or unknown conditions. Correction of existing code violations or incorrect / faulty base systems or building conditions.
- Sprinkler protection of exterior overhangs.
- Sprinkler protection of the interior portions of the mock up roof eaves of the upper deck, lower deck or bar areas.
- Provision of protection under concealed portions of the stage, provision of standpipes or hose valves at the stage, any other special systems related to the stage or proscenium protection, or any under floor protection. It is understood that the curtains will be changed out with non-combustible rated materials.
- Preparation of pipe for painting and painting or disinfecting of piping.
- Structural Reinforcement or fireproofing repair; Existing building structure is assumed to be adequate to support the new sprinkler piping and lifts/scaffold required to complete the scope of work, no structural upgrades or bracing are provided for in the bid. Hangers will need to affix to the structure and any fireproofing repair or vapor barrier repair will be by others.
- Any X-Rays of concrete walls or structure for anchor points or wall penetrations.
- Draftstops or draft curtains.
- Fire Extinguishers.
- Provisions for domestic only materials or Buy American/Buy America procurement requirements.
- Treatment or containment of expelled water.
- Seismic joint, bracing or expansion loops. Woodland park is not understood to be in a seismic zone.
- Hazardous materials (e.g. asbestos, lead based paint, etc.) testing, abatement, or removal.
- BIM or 3D CAD modeling and coordination.
- Additional sprinklers due to architectural requests for specific head locations or alignment with other ceiling elements beyond what is required by code.
- Sawcut, breakup, removal, repair, or replacement of concrete and/or asphalt. Concrete work formed or poured. Pole bases. Housekeeping pads. Floor or concrete patching where floor boxes or conduit sleeves are removed or added. Xray/GPR or locating of items in concrete.
- Special or select fill. Backfill of existing soil provisions only. Surveying, establish grades or site layout Protection of above ceiling spaces or any combustible blind spaces. All areas of exposed ceiling construction are understood to have walls and soffits rocked tight to deck around the open structure area.
- Provisions for a fire pump.
- Special systems (kitchen hoods, pre-action, exposure protection, duct protection, anti-freeze systems, dry systems, etc.) or any type of freeze protection. All areas of the building are to be maintained above 40° F at all times.

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FIRE PROTECTION AND LIFE SAFETY SPECIALISTS



COSCO Fire Protection

City of Woodland Park
Ute Pass Cultural Center – Woodland Park, CO – 4/05/2024 (Continued)

Exclusions/Qualifications Continued:

- Any special insurance design requirements beyond the minimum requirements of NFPA 13 (i.e. FM Global, GRC, IRI, etc.).
- Special identification procedures above NFPA 13 minimums, pipe labeling, valve tagging, painting/preparation for painting of sprinkler piping.
- HVAC/RTU/AHU Controls or VFDs or Starters
- Specialty wiring, installation, equipment, or connection (including, but not limited to; intercom, telephone, TV, sound, data, or security) unless otherwise stated above or shown on the electrical drawings.
- Replacing existing main and load breakers that fail to reset (turn on).
- Furniture or obstruction moving to allow access to work. Protection and/or moving of owner's equipment and materials.
- Temp heat, temp power, or temp water. The pricing of this bid is based on the ability to utilize the existing building power, water, and heat during the construction process.
- Any costs or activities associated with OCIP, CCIP.

Similar project work experience:

Home Depot Dry System Replacements

- Work contracted through the owners life safety representative
- Replacement of the existing dry systems over the garden and front canopy areas at multiple locations in Colorado
- Replacement of all branchline and main piping on the identified dry zones at each store location
- Electrical subcontract work included to swap air compressors

Summit County Dry System Replacement

- Work contracted direct to Summit County with Cosco Fire Protection as prime contractor
- Existing dry system main replacement to include installation of a new nitrogen generator on the system
- Electrical subcontract to add a circuit for the new nitrogen generator
- Ceiling removal and replacement to facilitate the sprinkler pipe replacement in the building over occupied areas

DMLK Early College Fire Sprinkler Retrofit

- Work contracted direct to the Denver Public Schools with Cosco Fire Protection as prime contractor
- Sprinkler system install work to extend an existing system partially protecting the building and provide sprinkler protection into the non-protected portions of the school
- Ceiling removal and replacement to facilitate the sprinkler install
- Cut, paint, patch of existing drywall ceilings to facilitate the sprinkler install

HF Sinclair System Replacement and New Install:

- Work contracted direct to HF Sinclair Oil Refining in Sinclair Wyoming
- Replacement of existing piping on multiple existing fire protection zones around process equipment
- Coordination of installation work in a high value, production facility

City of Lakewood Garage Dry Pipe Replacement:

- Replacement of four zones of dry pipe system main over an active garage.
- Installation of new dry-air-pac air compressors.
- Removal and reinstallation of ceiling systems through a subcontractor to facilitate the pipe replacement scope.
- Coordination of segmented site closures to allow for the scope of work.

Thank you for allowing Cosco Fire Protection the opportunity to earn the fire sprinkler work on this project. We look forward to the opportunity of working with you and delivering a cost-effective, value engineered fire protection solution for your project. If you should have any questions or need additional clarification, please don't hesitate to call me at (719)747-1440.

Sincerely,

COSCO FIRE PROTECTION

RJ Strawn
Branch Manager

Accepted By: _____

Title & Date: _____

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FIRE PROTECTION AND LIFE SAFETY SPECIALISTS

Cosco Fire Protection
Ute Pass Cultural Center - 22FA001

Schedule of Values

Design	\$ 119,695.00
Mobilization	\$ 43,872.00
Fire Sprinkler	
Material	\$ 103,487.00
Labor	\$ 78,193.00
Mechanical	
Material	\$ 116,497.00
Labor	\$ 86,874.00
Curtain	\$ 12,350.00
	\$ 560,968.00