CONTRACT DOCUMENTS AND GENERAL CONSTRUCTION SPECIFICATIONS
Bellyache Ridge Metropolitan District
250,000 Gallon Water Storage Tank

FOR
BELLYACHE RIDGE METROPOLITAN DISTRICT
P. O. BOX 600
EDWARDS, CO 81632

Prepared by:
Zancanella and Associates, Inc.
Engineering Consultants
1011 Grand Avenue
P. O. Box 1908
Glenwood Springs, CO 81601
(970) 945-5700
(970) 945-1253 – fax

March, 2011
INDEX TO CONTRACT DOCUMENTS

INVITATION TO BID
INSTRUCTIONS TO BIDDERS
ADDENDA
BID FORM WITH BID SCHEDULE
MATERIAL AND EQUIPMENT SUPPLIER LISTING
SUBCONTRACTOR LISTING
AGREEMENT
PERFORMANCE AND WARRANTY BOND
PAYMENT BOND
NOTICE OF AWARD
ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF AWARD
NOTICE TO PROCEED
NOTICE OF FINAL PAYMENT
GENERAL CONDITIONS
SPECIAL CONDITIONS
CONSTRUCTION SPECIFICATIONS
CONSTRUCTION DRAWINGS (Bound separately)
APPENDIX
INVITATION TO BID

250,000 Gallon Water Storage Tank

OWNER: Bellyache Ridge Metropolitan District
P.O. Box 600
Edwards, CO  81632

ENGINEER: Zancanella & Associates, Inc.
1011 Grand Avenue
P. O. Box 1908
Glenwood Springs, CO  81602

Sealed bids will be received by The Bellyache Ridge Metropolitan District, at Zancanella & Associates, 1011 Grand Avenue, Glenwood Springs, CO  81601, until 3:00 pm local time Wednesday, July 20, 2011.  Bids received after this time will not be accepted and will be returned unopened.

At said place and time, and promptly thereafter, all bids that have been duly received will be opened publicly and read aloud.  All interested parties are invited to attend.  The Owner reserves the right to reject any and all bids and to waive irregularities or informalities in any bid.

The work to be performed generally includes:  The construction of a new, partially buried, 250,000 gallon reinforced concrete water storage tank and associated piping and approximately 550 lineal feet of 8” DIP water main.

Copies of the Drawings, Specifications and other Contract Documents for use in preparing Bids may be obtained from Zancanella & Associates on or after June 17, 2011, upon paying $50.00 for each set of Contract Documents.  All payments made for Drawings, Specifications, and other Contract Documents are nonrefundable.

Copies of the Drawings and Project Specifications are also on file and may be examined at the Engineer’s address during normal working hours after 10:00 a.m.

Each Bidder shall file with his Bid a cashier’s check, or a Bid Bond, in accordance with the Instructions to Bidders.

The Bidder to whom a Contract is awarded will be required to furnish a Performance, Payment and Warranty Bond guaranteeing faithful performance.

No Bids may be withdrawn within a period of thirty (30) days after the date Bids are opened.

A mandatory pre-bid conference will be held at the end of Bellyache Ridge Road by the existing water tank, on July 6, 2011 at 10:00 am.  Bids from Bidders not indicated in the Owners Representative cords to have been in attendance at the Pre bid Conference will be returned unopened.

OWNER: Bellyache Ridge Metro District

By  /s/ Fred Rupp, Owners Representative
(Name)
INSTRUCTIONS TO BIDDERS

(Owner)  Bellyache Ridge Metro District  (Engineer)  Zancanella & Associates, Inc.
P. O. Box 600  1011 Grand Avenue
Edwards, CO  81632  Glenwood Springs, CO  81601

PART 1. DEFINED TERMS

1.1 Terms used in these Instructions to Bidders which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term “Successful Bidder” means the lowest, qualified, responsible responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

PART 2. COPIES OF CONTRACT DOCUMENTS

2.1 Complete copies of the Drawings and Project Specifications for use in preparing Bids may be obtained from the Engineer. All payments for Contract Documents are non-refundable.

2.2 No partial sets of Contract Documents will be issued. Complete sets of Contract Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

2.3 Owner and Engineer will make copies of Contract Documents available on the above terms for the purpose of obtaining Bids on the Work only and do not confer a license or grant for any other use.

PART 3. QUALIFICATIONS OF BIDDERS

3.1 Each Bidder must be prepared to submit written evidence of his qualifications to perform the Work as set forth in Part 16 of this Instructions to Bidders. Bidders may be required to submit evidence that they have a practical knowledge of the particular Work bid upon, and that they have the financial resources to complete the proposed Work. In determining the Bidder’s qualifications, the following factors will be considered: work previously completed by the Bidder and whether the Bidder (a) maintains a permanent place of business, (b) has adequate plant and equipment to do the Work properly and expeditiously, (c) has the financial resources to meet all obligations incident to the Work, and (d) has appropriate technical experience. Each Bidder may be required to show that he has handled former work so that no just claims are pending against such work. No Bid will be accepted from a Bidder who is engaged in any work which would impair his ability to perform or finance this Work.

3.2 Each Bid must contain evidence of Bidder’s qualification to do business in the State of Colorado.

PART 4. EXAMINATION OF CONTRACT DOCUMENTS; VISIT SITE

4.1 Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly; (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) familiarize himself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; (d) study and carefully correlate Bidder’s observations with the Contract Documents; and (e) attend the Pre-Bid conference and site visitation described in Part 6 herein.

4.2 Reference is made to the Soil Investigation Data for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or which may otherwise affect the cost,
progress or performance of the Work, and which have been relied upon by the Engineer in preparing the Drawings and Specifications.

Copies of such reports, if any, may be physically attached to or bound with the Contract Documents for the Bidder’s convenience but are not incorporated within or to be interpreted to constitute a part of the “Contract Documents”. Neither Owner nor Engineer makes any representation or warranty concerning such reports.

4.3 On request, Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of its Bid.

4.4 The lands upon which the Work is to be performed, rights-of-way for access thereto, and other lands designated for use by Contractor in performing the Work, are identified in the Supplementary Conditions, Specifications, or Drawings.

4.5 Access to the site may be arranged through the Engineer by contacting Ben Elmore, Telephone: (970) 945-5700. Site access will be limited to normal working hours and to pre-arranged times.

4.6 The submission of a Bid will constitute an incontrovertible representation by the Bidder that it has complied with every requirement of this Article 4 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

PART 5. INTERPRETATIONS

5.1 All questions about the meaning or intent of the Contract Documents are to be submitted to Engineer in writing. Replies will be issued only by Addenda. Questions received less than five (5) days prior to the date of opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda will be mailed or delivered to all parties recorded by Engineer as having received the Contract Documents. No Addenda will be issued later than three (3) days prior to the date for receipt of Bids except an Addendum, if necessary, postponing the date for receipt of Bids or withdrawing the request for Bids.

5.2 All Addenda to the Contract Documents shall be properly acknowledged in the space provided on the Bid Form.

PART 6. PRE-BID CONFERENCE (MANDATORY FOR BIDDING)

6.1 A mandatory Pre-Bid conference will be conducted by Owner and Engineer at the time and place indicated in the Invitation to Bid. Representatives of Owner and Engineer will be present to answer questions. Any questions which, in the opinion of the Engineer, cannot be answered by direct reference to the Contract Documents will be answered by formal written Addenda as outlined above under Part 5.

The Pre-Bid conference will include a tour of the site of the Work, conducted by representatives of Owner and Engineer. All interested parties are invited and required to attend.

PART 7. BASIS OF BIDS

7.1 The Bidder shall submit bids for all alternates, if any, listed on the Bid Form, as required by the Bid Form.

PART 8. BID SECURITY

8.1 Bid security shall be made payable to Owner, in an amount of five percent (5%) of the Bidder’s maximum Bid Price, including alternates, if any, and in the form of a Cashier’s Check or a Bid Bond on the form attached issued by a surety meeting the requirements of the General Conditions. Submission of a Bid will
constitute an agreement on the part of the Contractor and its Surety, if any, with the Owner that: (i) 5% of the Bidder’s maximum Bid Price, including alternates, if any, is a reasonable estimate of the presumed actual damages the Owner would suffer as a result of Contractor’s failure to enter into the Agreement and deliver the required Performance, Payment and Warranty Bond; (ii) it is difficult to ascertain the amount of actual damages to the Owner that would result from a breach; and (iii) the amount of 5% of the Bidder’s maximum Bid Price, including alternates, if any, shall be liquidated damages.

8.2 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Performance, Payment and Warranty Bond, whereupon it will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required Performance, Payment and Warranty Bond within ten (10) days of the notice of award, or in the event the Successful Bidder fails to enter into such Agreement and furnish such Performance, Payment and Warranty Bond, if the Successful Bidder fails to pay to Owner the difference between such Bid amount and such larger amount for which Owner may in good faith contract with another party to perform the Work covered by such Bid, then Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited to the extent of such difference. The Bid security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the “Effective Date of Agreement” (which term is defined in the General Conditions) or the sixty-first day after the Bid opening. Bid security of other Bidders will be returned within seven (7) days of the Contract award.

PART 9. CONTRACT TIME

9.1 The number of days within which, or the date by which, the Work is to be completed (the Contract Time) is set forth in the Bid Form (or if left blank, is to be filled in by the Bidder) and will be included in the Agreement.

PART 10. LIQUIDATED DAMAGES

10.1 Provisions for liquidated damages are set forth in the Bid Form and the Agreement.

PART 11. SUBSTITUTE MATERIAL AND EQUIPMENT

11.1 The Contract, if awarded, will be executed with the Successful Bidder on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or “or-equal” items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the “Effective Date of Agreement”. The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in the General Conditions which are supplemented in the Supplementary Conditions.

PART 12. SUBCONTRACTORS

12.1 The Bid Form requires that Bidder identify certain Subcontractors and other persons and organizations to be submitted as part of the Bid. The apparent Successful Bidder, and any other Bidder so requested, shall within seven (7) days after the date of the Bid opening submit to Owner a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work as to which such identification is so required. Such list shall be accompanied by a written statement of qualifications including financial data, a summary of previous experience, previous commitments and evidence of authority to conduct business in Colorado. If Owner or Engineer after due investigation has reasonable objection to any proposed Subcontractor, other person or organization, either may (before giving the Notice of Award) request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid Price. If the apparent Successful Bidder declines to make any substitution, the contract shall not be awarded to such Bidder, but declining to
make any such substitution will not constitute grounds for sacrificing Bid security by such Bidder. Any Subcontractor, other person or organization so listed, and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award, will be deemed acceptable to Owner and Engineer.

12.2 No Contractor shall be required to employ any Subcontractor, other person or organization against whom the Bidder has reasonable objection.

PART 13. BID FORM

13.1 Two copies of the Bid Form are included herewith; additional copies may be obtained from Engineer.

13.2 Bid Forms must be completed in ink or be typewritten. The Bid Price of each item on the form must be stated in words and numerals; in case of a conflict, words will take precedence.

13.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

13.5 Bids by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant.

13.6 The names of all persons signing Bids must also be legibly printed or typed below the signature. A Bid by a person who affixes to his signature the word “president”, “secretary”, “agent” or other designation without disclosing his principal may be held to be the Bid of the individual signing. Evidence of the authority of the person signing shall be furnished.

13.7 The full name of each person or company interested in the Bid shall be listed on the Bid Form.

13.8 The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which shall be inserted on the Bid Form.

13.9 No alterations in Bids, or in the printed forms therefore, by erasures, interpolations, or otherwise will be acceptable unless each such alteration is signed or initialed by the Bidder; if initialed, Owner may require the Bidder to identify any alteration so initialed. No alteration in any Bid, or in the form on which it is submitted, shall be made after the Bid has been submitted.

13.10 The address to which communications regarding the Bid are to be directed must be shown.

PART 14. EQUIPMENT SUPPLIER LISTING

14.1 Each Bidder shall list on the form provided the name of the manufacturers or suppliers of the items of equipment and systems listed on the form which he proposes to furnish. Upon the award of a contract, the named equipment shall be furnished. Substitutions will be permitted only if named equipment does not meet the specifications or the manufacturer is unable to meet delivery requirements of the construction schedule.

14.2 Preliminary acceptance of equipment listed by manufacturer’s name shall not in any way constitute a waiver of the specifications covering such equipment; final acceptance will be based on full conformity with the specifications covering the equipment.
14.3 Failure to furnish all information requested may be cause for rejection of the Bids.

PART 15. SUBMISSION OF BIDS

15.1 Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be included in an opaque, sealed envelope addressed to Owner and identified on the outside with the Bidder’s name and address and with the words “Bid for LEDE Ditch Piping”.

15.2 Each Bid shall be accompanied by the Bid security and other required documents.

15.3 If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation “BID ENCLOSED” on the face thereof.

15.4 Bids shall be deposited in the designated location prior to the time and date for receipt of Bids indicated in the Invitation to Bid, or the modified time and date indicated by addendum. Bids received after the time and date for receipt of Bids will be returned unopened. Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

15.5 Oral, telephone, or telegraph Bids are invalid and will not receive consideration. No Bidder may submit more than one Bid. Multiple Bids under different names will not be accepted from one firm or association.

PART 16. POST BID/PRE AWARD SUBMITTALS

16.1 The three low Bidders identified by Owner must submit the following information by hand delivery to Engineer on the day following the Bid opening:

A. List of a minimum of five recent similar projects the Contractor has performed.

B. Copies of the most recent financial statements of all listed Subcontractors included in the Bid submittal.

C. List of Project Managers and Superintendents to be used on this project for the Contractor and all listed Subcontractors. Provide resumes and recent projects for all of the above.

D. Names and telephone numbers of a minimum of five references on similar work for the Contractor and all listed Subcontractors.

E. Names, relevant experience, and position of individual who will perform site surveying if not a licensed Surveyor.

F. License number of Bidder and all listed Subcontractors.

16.2 The above information must be available at the time and place indicated to be considered in further evaluation, and therefore, all Bidders are recommended to compile this data prior to submitting their Bids.

PART 17. MODIFICATION AND WITHDRAWAL OF BIDS

17.1 Bids submitted early may be modified or withdrawn by notice to the party receiving Bids at the place and prior to the time designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder or be by telegram; if by telegram, written confirmation over the signature of the Bidder must have been mailed and postmarked on or before the date and time set for receipt of Bids; the notice shall be so worded as not to reveal the amount of original or modified Bid Price. Bids may also be modified or withdrawn in person by the Bidder or an authorized representative provided he can prove his identity and authority. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
17.2 If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of his Bid, that Bidder may withdraw his Bid and the Bid security will be returned. Thereafter, the Bidder will be disqualified from further Bidding on the Work. No right to claim mistake shall exist for Bidder following this twenty-four (24) hour period.

PART 18. OPENING OF BIDS

18.1 Bids will be opened publicly and read aloud.

PART 19. BIDS TO REMAIN OPEN

19.1 All Bids shall remain open for sixty (60) days after the date of the Bid opening, but Owner may, in his sole discretion, release any Bid and return the Bid security prior to that date.

PART 20. AWARD OF CONTRACT

20.1 Owner reserves the right to reject any and all Bids, to waive any and all formalities and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive or conditional Bids. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

20.2 In evaluating Bids, Owner shall consider the qualifications of the Bidders and whether or not the Bids comply with the prescribed requirements and alternates (if any are accepted) in the order in which they are listed on the Bid Form, but Owner may accept alternates in any order or combination.

20.3 Owner may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the Bid Form. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Owner.

20.4 Owner may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, the proposed Subcontractors and other persons and organizations to do the Work in accordance with the Contract Documents to Owner’s satisfaction within the prescribed time.

20.5 Owner reserves the right to reject the Bid of any Bidder who does not pass any evaluation to Owner’s satisfaction within the prescribed time.

20.6 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within sixty (60) days after the date of the Bid opening.

PART 21. PERFORMANCE, PAYMENT AND WARRANTY BOND

21.1 The General Conditions set forth Owner’s requirements for the Performance, Payment and Warranty Bond. When the Successful Bidder delivers the copies of the executed Agreement to owner, it shall be accompanied by the required Performance, Payment and Warranty Bond.
BID FORM

To:  Bellyache Ridge Metro District  PROJECT:
P. O. Box 600  250,000 Gallon Water Storage Tank
Edwards, CO  81632
(970) 926-6060

THE UNDERSIGNED BIDDER, having familiarized himself with the Work required by the Contract Documents, the site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES AND AGREES, if this Bid is accepted, to enter into Agreement in the form attached, to perform all Work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated in and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

BID SCHEDULE:

A.  **BASE BID PRICE**: Phase I, Contract 1

______________________________ Dollars ($______________).

B.  **BID PRICE ALTERNATIVE ONE**: Phase II, Contract 2

______________________________ Dollars ($______________).

The undersigned Bidder agrees to furnish the required Bond and enter into Agreement within TEN (10) days after acceptance of this Bid, and further agrees to complete all Work covered by the Bid, in accordance with specified requirements and in accordance with the following schedule (Bidder to enter number of days after date of Notice to Proceed for all of the following, unless number of days has already been entered):
1. Substantial Completion (Ready for Punchlist) 120 Days

2. Punchlist Complete 150 Days

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

1. Late Startup of all major Equipment $ 500.00 Per Day

2. Late Substantial Completion $ 500.00 Per Day
   (Ready for Punchlist)

3. Late Punchlist Completion $ 500.00 Per Day

Receipt of copies of the following addenda is hereby acknowledged.

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Bidder’s Signature</th>
<th>Date Acknowledged</th>
</tr>
</thead>
</table>

Enclosed herewith is the required Bid Security, in the form of Cashier’s Check/Bid Bond (strike one), in the amount of $______________________________ Dollars ($________________) which the undersigned Bidder agrees is to be forfeited to and become the property of owner, as liquidated damages, should this Bid be accepted and he fails to enter into Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, but otherwise the Bid security will be returned upon Bidder signing the Agreement and delivering the Performance, Payment and Warranty Bond.

In submitting this Bid, it is understood that Owner reserves the right to reject any and all Bids, and it is understood that this Bid may not be withdrawn during a period of sixty (60) days after the scheduled time for the receipt of Bids.
The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

The full names and addresses of parties interested in this Bid as principals are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
</table>
If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: ________________________________

If Joint Venture is:

An Individual: [signature]

Print or type name: ________________________________

Doing business as: ________________________________

Date: ________________________________

A Partnership: ________________________________

By: [signature]

General Partner

Print or type name: ________________________________

Date: ________________________________

A Corporation: ________________________________

(a Corporation)

By: [signature]

Print or type name: ________________________________

Title: ________________________________

Date: ________________________________

( SEAL )
ATTEST:

________________________________________

Title: ___________________________________
MATERIAL AND EQUIPMENT SUPPLIER LISTING

The following information is submitted for each major supplier of material and each manufacturer and supplier of equipment for manufacturers and suppliers of major items of material, equipment and systems to be used in the Work if the Bidder is awarded the contract.

<table>
<thead>
<tr>
<th>Specification Section No.</th>
<th>Material or Equipment Description</th>
<th>Manufacturer and Supplier</th>
</tr>
</thead>
</table>

The Surety who will be the surety on the Performance, Payment and Warranty Bond will be ___________________________________________________.

__________________________________________
Signature
The following information is submitted for each subcontractor that will be used in the Work if the Bidder is awarded the Agreement. Additional numbered pages shall be attached to this page as required. Each page shall be headed “SUBCONTRACTOR LISTING” and signed. All Work to be subcontracted over $________________ shall be listed.

<table>
<thead>
<tr>
<th>Amount of Subcontract</th>
<th>Name and Address of Subcontractor</th>
<th>Portion of Work</th>
</tr>
</thead>
</table>

Signature
BID FORM

To:  Bellyache Ridge Metro District
     P. O. Box 600
     Edwards, CO  81632
     (970) 926-6060

PROJECT:  250,000 Gallon Water Storage Tank

THE UNDERSIGNED BIDDER, having familiarized himself with the Work required by the Contract Documents, the site where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES AND AGREES, if this Bid is accepted, to enter into Agreement in the form attached, to perform all Work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Agreement and the furnishing of materials and equipment required to be incorporated in and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the Work; and Bond, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor in accordance with the following Bid prices (Contractor must submit on Base Bid and Bid Alternates, if any, to be considered).

BID SCHEDULE:

A.  BASE BID PRICE: Phase I, Contract 1

_________________________________________ Dollars ($_____________).

B.  BID PRICE ALTERNATIVE ONE: Phase II, Contract 2

_________________________________________ Dollars ($_____________).

The undersigned Bidder agrees to furnish the required Bond and enter into Agreement within TEN (10) days after acceptance of this Bid, and further agrees to complete all Work covered by the Bid, in accordance with specified requirements and in accordance with the following schedule (Bidder to enter number of days after date of Notice to Proceed for all of the following, unless number of days has already been entered):
1. Substantial Completion (Ready for Punchlist)  120 Days
2. Punchlist Complete  150 Days

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

1. Late Startup of all major Equipment  $ 500.00 Per Day
2. Late Substantial Completion  $ 500.00 Per Day
   (Ready for Punchlist)
3. Late Punchlist Completion  $ 500.00 Per Day

Receipt of copies of the following addenda is hereby acknowledged.

Addendum No.  Bidder’s Signature  Date Acknowledged

Enclosed herewith is the required Bid Security, in the form of Cashier’s Check/Bid Bond (strike one), in the amount of ________________________________ Dollars ($____________) which the undersigned Bidder agrees is to be forfeited to and become the property of owner, as liquidated damages, should this Bid be accepted and he fails to enter into Agreement in the form prescribed and to furnish the required Bonds within ten (10) days, but otherwise the Bid security will be returned upon Bidder signing the Agreement and delivering the Performance, Payment and Warranty Bond.

In submitting this Bid, it is understood that Owner reserves the right to reject any and all Bids, and it is understood that this Bid may not be withdrawn during a period of sixty (60) days after the scheduled time for the receipt of Bids.
The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

The full names and addresses of parties interested in this Bid as principals are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
</table>

SIGNATURE OF BIDDER

If an Individual: [signature]

Print or type name: _____________________________________________

Doing business as: _____________________________________________

Date: _________________________________________________________

If a Partnership: _____________________________________________

By: [signature]  

General Partner

Print or type name: _____________________________________________

Date: _________________________________________________________

If a Corporation: _____________________________________________

(a _____________________________________________ Corporation)

By: [signature]  

Print or type name: _____________________________________________

Title: _________________________________________________________

Date: _________________________________________________________

(SEAL)

ATTEST:

___________________________________________________________

Title: _________________________________________________________
If Bidder is a joint venturer, all venturers or their authorized agents must sign below.

Name of Joint Venture: __________________________________________________________

If Joint Venture is:

An Individual: [signature]  

Print or type name: __________________________________________________________

Doing business as: __________________________________________________________

Date: ______________________________

A Partnership: __________________________________________________________________

By: [signature]  

General Partner

Print or type name: __________________________________________________________

Date: ______________________________

A Corporation: __________________________________________________________________

(a Corporation)  

By: [signature]  

Print or type name: __________________________________________________________

Title: __________________________________________________________

Date: ______________________________

(SEAL)
ATTEST:

________________________

Title: ________________________
MATERIAL AND EQUIPMENT SUPPLIER LISTING

The following information is submitted for each major supplier of material and each manufacturer and supplier of equipment for manufacturers and suppliers of major items of material, equipment and systems to be used in the Work if the Bidder is awarded the contract.

<table>
<thead>
<tr>
<th>Specification Section No.</th>
<th>Material or Equipment Description</th>
<th>Manufacturer and Supplier</th>
</tr>
</thead>
</table>

The Surety who will be the surety on the Performance, Payment and Warranty Bond will be __________________________________________.

______________________________
Signature
SUBCONTRACTOR LISTING

The following information is submitted for each subcontractor that will be used in the Work if the Bidder is awarded the Agreement. Additional numbered pages shall be attached to this page as required. Each page shall be headed “SUBCONTRACTOR LISTING” and signed. All Work to be subcontracted over $________________ shall be listed.

<table>
<thead>
<tr>
<th>Amount of Subcontract</th>
<th>Name and Address of Subcontractor</th>
<th>Portion of Work</th>
</tr>
</thead>
</table>

____________________________________
Signature
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Description and Unit Price in Words</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>552</td>
<td>L.F.</td>
<td>8&quot; D.I.P., CL52 water distribution line NOT IN EXISTING ROADWAY, including excavation, bedding, backfill, compaction, fittings, megalugs, joint restraints, bends, polyethylene wrap, tracer wire, complete and in place, per lineal foot.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Lineal Foot - Words)

**TOTAL ALL ITEMS**
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Description and Unit Price in Words</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>L.S.</td>
<td>Mobilization, including any and all equipment necessary to complete project, (this item amount can not exceed 5 percent of total bid), per lump sum. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>L.S.</td>
<td>Provide clearing, grubbing, silt fencing and all other necessary erosion control and sediment abatement around tank construction site (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>L.S.</td>
<td>Earthwork for 250k gallon water tank, excess excavated material to remain on site, including topsoil removal and stockpiling, excavation and grading for water tank, tank foundation preparation, berm construction, subgrade scarification and compaction, any rock excavation or unsuitable material removal, replacement and recompaction, and top soil replacement, complete and in place. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>L.S.</td>
<td>Foundation and drain system for buried concrete tank. Provide screened rock, filter fabric, drain piping and extensions to daylight as per Soils Report and Supplemental Detail. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>L.S.</td>
<td>Provide all Structural fill required for tank foundation slab. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>L.S.</td>
<td>Install 8&quot; DIP distribution and 4&quot; DIP source piping, and electrical conduits, including entrance bell, silt stop, perforated riser, fittings under tank, and extensions and connections to access road piping and conduits as per plans &amp; specification, complete and in place. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>L.S.</td>
<td>Provide final grading for tank site and access road areas, restoration of work areas, and revegetation of disturbed areas around the tank and the access roadway. (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>L.S.</td>
<td>Construct 6&quot; DIP and 6&quot; SDR 21 HDPE Tank drain line, complete and in place (Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item No.</td>
<td>Estimated Quantity</td>
<td>Unit</td>
<td>Description and Unit Price in Words</td>
<td>Unit Price</td>
<td>Total Price</td>
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<td>---------</td>
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<td>------</td>
<td>-------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>9</td>
<td>1</td>
<td>L.S.</td>
<td>Construction of 250,000 gallon, reinforced concrete, water storage tank as per plans, including all sleeves, waterstops, access hatch, vent, and other appurtenances within five feet outside of outside face of tank wall, complete and in place.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>L.S.</td>
<td>Geotech testing for concrete and excavation/ backfill</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>L.S.</td>
<td>Installation of controls including tank intrusion alarm, tank high water float, tank transducer, chlorine/system monitoring vault, cl2 monitor complete and in-place</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Lump Sum - Words)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL ALL ITEMS**
AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2011, by and between Bellyache Ridge Metro District, a quasi-municipal corporation, located in the County of Eagle, State of Colorado, hereinafter referred to as “Owner”, and __________________, a ____________, of Colorado, hereinafter referred to as “Contractor.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

PART 1. SCOPE OF WORK

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

PART 2. CONTRACT DOCUMENTS

A. The Contract Documents which comprise the entire agreement and contract between Owner and Contractor, and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Addendum thereto;
2. Instructions to Bidders;
3. Bid Form;
4. Performance and Warranty Bond;
5. Payment Bond;
6. Notice of Award;
7. Notice to Proceed;
8. Drawings, consisting of sheets number _ through _;
9. Specifications;
10. Addenda No(s)._ and _ to Specifications, if applicable;
11. General Conditions and Supplementary Special Conditions, if any;
12. Any modifications, Change Orders, Field Orders or other such revisions properly authorized after the execution of this Agreement;
13. Documentation submitted by Contractor with Bid and prior to Notice of Award;
14. Contractor’s Bid (pages __ to __, inclusive), marked Exhibit A;
15. Shop drawings and other submittals furnished by Contractor during performance of the Work and accepted in writing by Owner;
16. Any Notice of Partial Utilization;
17. Notice of Substantial Completion and Notice of Final Completion and Acceptance;

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents supersede all prior Agreements and understandings, if any, and may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

PART 3. ENGINEER

A. The Project has been designed by Zancanella & Associates, Inc. (the “Engineer”), who is to act as Owner’s representative, and who will assume all duties and responsibilities, and who will have the rights and authority, assigned to Engineer in the Contract Documents, unless the Owner shall appoint, in writing, a replacement Engineer or unless the Owner shall appoint in writing a different representative.

PART 4. AGREEMENT PRICE

A. Owner shall pay Contractor for the performance of Work and completion of the Project the total price of _________________________ Dollars ($____________) in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by the Engineer.

PART 5. CONTRACT TIME

A. Contractor shall commence performance on the Project within ten (10) days after the date of the Notice to Proceed. The Contract Time shall commence on the date of the Notice to Proceed, unless explicitly stated otherwise in the Notice to Proceed. The Work shall be completed according to the following schedule (where number of days equals days from the date of the commencement of the Contract Time):
1. Substantial Completion (ready for Punchlist): 120 days

2. Punchlist Complete: 150 days

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

1. Late Substantial Completion: $500.00 per day (ready for Punchlist)

2. Late Punchlist Complete: $500.00 per day

PART 6. PAYMENT PROCEDURES

A. Contractor shall submit applications for payment in accordance with the General Conditions. Applications for payment will be processed by Engineer as provided in the General Conditions.

B. Owner shall make progress payments on account of the Agreement Price on the basis of Contractor’s applications for payment, as recommended by Engineer, within forty-five (45) days of Owner’s approval of Contractor’s pay request. All progress payments will be on the basis of the progress of Project measured by the schedule of values provided for in the General Conditions.

1. If Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety percent (90%) of the calculated value of any Work completed, less the aggregate of payments previously made until fifty percent (50%) of the Work required by this Agreement has been performed. Thereafter, Owner shall pay all remaining progress payments without retaining additional funds, if, in the opinion of the Engineer and Owner, satisfactory progress is being made on the Project. If, in the opinion of Engineer and Owner, satisfactory progress is not being made on the Project, or if claims are filed under Section 38-26-107, Colorado Revised Statutes, as amended, Owner may retain such additional amounts as Owner may deem reasonably necessary to assure completion of the Work, or to pay such claims and any engineer’s and attorney’s fees reasonably incurred or to be incurred by Owner in defending or handling such claims. The withheld percentage of the Agreement Price shall be retained until the Project is completed satisfactorily and finally accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of Work.
2. Payments will not be made for materials stored off-site (unless otherwise provided by Addendum or Change Order), but will be made for materials stored on-site. Contractor will remain responsible for security of the materials and the replacement at Contractor’s sole cost of material lost, damaged, destroyed or stolen.

C. Owner shall make final payment, including release of retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S.

PART 7. INTEREST

A. All invoices approved for payment and not paid when due hereunder, exclusive of retainage which shall be paid as provided in Part 6, shall bear interest at one percent (1%) per annum from the due date until paid.

PART 8. CONTRACTOR’S REPRESENTATIONS

A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.

2. Contractor has carefully studied the site, and has performed all necessary investigations, tests, and subsurface investigations to define the latent physical conditions of the construction site affecting cost, progress, or performance of Project.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as it deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
PART 9.  OWNER'S REPRESENTATIONS

A.  Owner makes the following representations:

1. Owner has appropriated money equal to or in excess of the Agreement Price.

2. Owner, by issuing any Change Order or other form of order or directive requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price, represents to Contractor that lawful appropriations to cover the costs of the additional work have been made.

PART 10.  MISCELLANEOUS

A.  Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B.  Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, monies that may become due and monies 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). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. 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.

The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

C.  If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

D.  No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

E.  None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, the Contract Documents shall be specifically enforceable by either party. The Contract Documents
shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

F. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

G. This Agreement, together with the other Contract Documents, constitutes the entire Agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

H. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

I. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement and the other Contract Documents are of the essence.

J. The section headings in this Agreement and in the other Contract Documents are inserted for convenience and are not intended to indicate completely or accurately the contents of the Sections they introduce, and shall have no bearing on the construction of the Sections they introduce.

K. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

L. By execution of this Agreement, the undersigned each individually represent that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory’s execution of this Agreement.

M. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[The Remainder of this Page Is Intentionally Left Blank]
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

OWNER
BELLYACHE RIDGE METROPOLITAN DISTRICT

 By __________________________________________

Address: ______________________________________
Phone: _______________________________________

Attest:

____________________________________________
, Secretary
(SEAL)

CONTRACTOR

 By __________________________________________
Title: ____________________________
Address: ______________________________________
Phone: _______________________________________
LICENSE NO: ____________________________

AGENT FOR SERVICE OF PROCESS:

____________________________________________
The foregoing Agreement was acknowledged before me this _____ day of __________, 20____ by ______________________ as President ________________ of _________________.

Witness my hand and official seal.

My commission expires: ________________________

Notary Public

The foregoing Agreement was acknowledged before me this _____ day of __________, 20____ by ______________________ as ________________ of _________________.

Witness my hand and official seal.

My commission expires: ________________________

Notary Public
STATE OF COLORADO )
COUNTY OF ____________________ )

That we, _____________________________________________________, of the County of _____________________, and State of __________________________ (hereinafter called “Principal”), as Principal, and _______________________________________________ (hereinafter called “Surety”), as Surety, authorized under the laws of the State of Colorado to act as surety on bonds for principals, are held and firmly bound unto _________________________ (hereinafter called “Owner”) as Obligee, in the penal sum of _____________________________ Dollars ($____________) in lawful money of the United States for payment by Principal and Surety, and bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents.

WHEREAS, Principal has, on _______________________, 20___, entered into a written Agreement with Owner for construction of the Project as defined in said Agreement, which Agreement is by reference made a part hereof and is hereinafter referred to as the Agreement.

NOW, THEREFORE, the conditions of this obligation are that if the Principal shall:
(1) faithfully perform said Agreement on Principal’s part and satisfy all claims and demands incurred for the same; (2) fully indemnify and save harmless the Owner from all costs and damages which said Owner may suffer by reason of Principal’s failure so to do; (3) fully reimburse and repay said Owner all outlay and expenses which said Owner may incur in making good any default; (4) pay all persons, firms and corporations all just claims due them for the
payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of Principal’s Agreement; and (5) keep the Work constructed under this Agreement in good repair for a period of two years from date of final acceptance by said Owner, then this obligation is null and void; otherwise it shall remain in full force and effect.

To the extent permissible by law, the Principal shall protect, defend, indemnify and save harmless the Owner, the Engineer, and their officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, and death to any person or damage to property, including in part the loss of use resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Principal, or his employees, servants, agents, subcontractors or suppliers, or anyone else under the Principal’s direction and control, and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Agreement, or from conditions created by the performance or non-performance of said work or services.

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

Whenever Principal shall be, and is declared by Owner to be, in default under the Agreement, the Owner having performed Owner’s obligations thereunder, the Owner may avail itself of the provisions of Section 15.02 B of the General Conditions which are incorporated by
reference in the Agreement and the Surety shall promptly pay the amounts, if any, due Owner by Principal.

Any suit under this Bond must be instituted before the expiration of three years from the date on which final payment under the Agreement falls due.

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

The Surety hereby waives the right to special notification of any notification of or alterations, omissions or reductions, extra or additional work, extensions of time, Change Orders, Field Orders or any other act or acts of Owner or its authorized agents under the terms of the Agreement; and failure to notify Surety of such shall in no way relieve Surety of its obligations.
Signed and sealed this _____ day of _____________________, 20__.

PRINCIPAL:

_____________________________  By:  ________________________________
Witness

_____________________________
(Address)

SURETY:

_____________________________  By:  ________________________________
Witness

_____________________________
(Address)

Surety’s Telephone No.:  ________________________________
PAYMENT BOND

STATE OF COLORADO )
COUNTY OF ____________________ ) ss. KNOW ALL MEN BY THESE PRESENTS:

That we, __________________________________________________________, of the
County of ____________________, and State of __________________________ (hereinafter
called “Principal”), as Principal, and ________________________________________________
(hereinafter called “Surety”), as Surety, authorized under the laws of the State of Colorado to act
as surety on bonds for principals, are held and firmly bound unto _________________________
(hereinafter called “Owner”), as Obligee, in the penal sum of _____________________ Dollars
($____________) in lawful money of the United States for payment by Principal and Surety,
and bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally and firmly by these presents.

WHEREAS, Principal has, on _____________________, 20___, entered into a written
Agreement with Owner for construction of the Project as defined in said Agreement, which
Agreement is by reference made a part hereof and is hereinafter referred to as the Agreement.

NOW, THEREFORE, the conditions of this obligation are that if the Principal shall pay
all persons, firms and corporations all just claims due them for the payment of all laborers and
mechanics for labor performed, for all materials and equipment furnished, and for all materials
and equipment used or rented in the performance of Principal’s Agreement, then this obligation
is null and void; otherwise it shall remain in full force and effect.

To the extent permissible by law, the Principal shall protect, defend, indemnify and save
harmless the Owner, the Engineer, and their officers, agents, servants and employees, from and
against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, and death to any person or damage to property, including in part the loss of use resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Principal, or his employees, servants, agents, subcontractors or suppliers, or anyone else under the Principal’s direction and control, and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Agreement, or from conditions created by the performance or non-performance of said work or services.

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

Whenever Principal shall be, and is declared by Owner to be, in default under the Agreement, the Owner having performed Owner’s obligations thereunder, the Owner may avail itself of the provisions of Section 15.02 B of the General Conditions which are incorporated by reference in the Agreement and the Surety shall promptly pay the amounts, if any, due Owner by Principal.

Any suit under this Bond must be instituted before the expiration of three years from the date on which final payment under the Agreement falls due.

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

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

Signed and sealed this _______ day of ____________________, 20__.

PRINCIPAL:

__________________________________________  By:  ________________________________
Witness

__________________________________________  ________________________________
(Address)

SURETY:

__________________________________________  By:  ________________________________
Witness

__________________________________________
(Address)

Surety’s Telephone No.:  ________________________________
NOTICE OF AWARD

______________, Colorado

Date: __________

To: ________________________________

_______________________________

_______________________________

_______________________________

The Owner, having duly considered the Bid Form submitted on __________, for the Work covered by the Contract Documents titled Composting Facility in the amount of ________________ Dollars ($______________), and it appearing that the Price and other information in your Bid Form is fair, equitable and to the best interest of the Owner, the offer in your Bid Form is hereby accepted.

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

In addition you are required to furnish at the said time a Certificate of Insurance and an Opinion of an insurance agent or counsel evidencing compliance with the requirements for insurance as stated in the Contract Documents.

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

You are required to return an acknowledged copy of this Notice of Award to Engineer.

By ________________________________

Title ________________________________
ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF AWARD:

Receipt of the above Notice of Award is hereby acknowledged this _____ day of ________________________, 20____.

________________________________________
Contractor

By

Title

________________________________________
NOTICE TO PROCEED

___________________, Colorado

Date:________________________

To: __________________________

________________________________

________________________________

________________________________

You are hereby authorized to proceed as of the date of this Letter or within ten (10) consecutive calendar days hereafter with the Work covered by the Contract Documents titled Composting Facility for the sum of __________________________Dollars ($________________). The Contract Time, as such term is defined in the General Conditions, shall commence to run on the date of this Letter.

You are to return promptly to Engineer an acknowledged copy of this Notice to Proceed and you are to notify the Engineer 48 hours before starting work.

Bellyache Ridge Metropolitan District

By __________________________

Title __________________________
ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:

Receipt of the above Notice to Proceed is hereby acknowledged this _____ day of ______________, 20____.

CONTRACTOR

By

Title
NOTICE OF FINAL PAYMENT

NOTICE is hereby given that the Bellyache Ridge Metropolitan District ("District") of Eagle County, Colorado, will make final payment at ____________________________, Colorado, on ____________________________, 20___, at the hour of _________ ___.m. to ____________________________, of ____________________________, Colorado for all work done by said Contractor(s) in construction work performed within the Town.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to the District, whose address is P. O. Box 600, Edwards, Colorado 81632, on or before the date and time hereinabove shown. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release the Town, its Council Members, officers, agents, and employees, of and from any and all liability for such claim.

BY ORDER OF THE BOARD OF DIRECTORS

BELLYACHE RIDGE METROPOLITAN DISTRICT

By ________________________________
Secretary

First Publication __________, 20____.
Last Publication __________, 20____.
Published in: _______________________
GENERAL CONDITIONS
TABLE OF CONTENTS

PART 1. DEFINITIONS .............................................................................................................. 1

PART 2. PRELIMINARY MATTERS ....................................................................................... 4
  2.1 DELIVERY OF BONDS ............................................................................................. 4
  2.2 EXECUTION AND TRANSMISSION OF DOCUMENTS ........................................... 4
  2.3 COPIES OF DOCUMENTS ....................................................................................... 4
  2.4 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED .................. 5
  2.5 STARTING THE PROJECT ....................................................................................... 5
  2.6 BEFORE STARTING CONSTRUCTION ....................................................................... 5
  2.7 PRECONSTRUCTION CONFERENCE ....................................................................... 6

PART 3. CONTRACT DOCUMENTS: INTENT AND REUSE ..................................................... 6
  3.1 INTENT ................................................................................................................... 6
  3.2 REUSE OF DOCUMENTS ......................................................................................... 7

PART 4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS .................................................... 7
  4.1 AVAILABILITY OF LANDS ..................................................................................... 7
  4.2 PHYSICAL CONDITIONS - INVESTIGATIONS AND REPORTS ............................. 8
  4.3 UNFORESEEN PHYSICAL CONDITIONS ................................................................. 8
  4.4 REFERENCE POINTS ............................................................................................... 9

PART 5. BONDS AND INSURANCE ...................................................................................... 9
  5.1 PERFORMANCE AND OTHER BONDS .................................................................... 9
  5.2 CONTRACTOR’S INSURANCE REQUIREMENTS .................................................... 10
  5.3 OWNER AND ENGINEER ADDITIONAL INSURED .................................................................................................................................................................................................................................................................................... 13
  5.4 PROPERTY INSURANCE ......................................................................................... 13
  5.5 PARTIAL UTILIZATION - PROPERTY INSURANCE .................................................. 15
  5.6 ACCEPTANCE OF INSURANCE ............................................................................. 16
  5.7 DEDUCTIBLES ...................................................................................................... 16
  5.8 CERTIFICATE OF INSURANCE; OPINION OF AGENT ......................................... 16

PART 6. CONTRACTOR’S RESPONSIBILITIES ........................................................................ 16
  6.1 SUPERVISION AND SUPERINTENDENCE ............................................................. 16
  6.2 LABOR, MATERIALS, AND EQUIPMENT ............................................................... 18
  6.3 EQUIVALENT MATERIALS AND EQUIPMENT ..................................................... 21
  6.4 CONCERNING SUBCONTRACTORS ....................................................................... 22
  6.5 PATENT FEES AND ROYALTIES .......................................................................... 23
  6.6 PERMITS .................................................................................................................. 24
  6.7 LAWS AND REGULATIONS ..................................................................................... 24
  6.8 TAXES ..................................................................................................................... 24
  6.9 USE OF PREMISES ................................................................................................. 25
PART 20.  STREAMLINED SPECIFICATIONS ...............................................................72

PART 21.  HANDLING OF DISPUTES ........................................................................72
  21.1 DISPUTES ..................................................................................................72
  21.2 DISPUTES WITH THIRD PARTIES ..........................................................73

PART 22.  DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE
          AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE (IF ANY).......73
  22.1 DESCRIPTION ...........................................................................................73
  22.2 DUTIES AND RESPONSIBILITIES ...........................................................73
  22.3 LIMITATIONS OF AUTHORITY ...................................................................76

PART 23.  DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE
          AUTHORITY OF THE OWNER’S REPRESENTATIVE .................................77
  23.1 DESCRIPTION ...........................................................................................77
  23.2 DUTIES AND RESPONSIBILITIES .............................................................77
  23.3 LIMITATIONS OF AUTHORITY .....................................................................78
GENERAL CONDITIONS

PART 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated below, which are applicable to both the singular and plural thereof:

**Addenda** - Written or graphic instruments issued by the Owner prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

**Agreement** - The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** - The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement.

**Application for Partial Payment** - The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

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

**Change Order** - A written order to Contractor signed by Owner and Contractor authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – The documents identified as Contract Documents in the Agreement between the Owner and the Contractor.

**Contract Time** - The number of days stated in the Agreement for the Completion of the Work.

**Contractor** - The person or entity with whom Owner has entered into the Agreement to perform the Work.

**Day** - A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval
referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

**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 parties to sign and deliver.

**Engineer** - Named as Engineer in Agreement, who shall also serve as Owner’s Representative unless Owners shall appoint, in writing, a different representative.

**Field Order** - A written order issued by Engineer which orders minor changes in the Work in accordance with paragraph 10.1B but which does not involve a change in the Agreement Price or the Contract Time.

**Hazardous Materials** – “Hazardous substances”, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. Sect. 9601 et. seq., as amended or hereafter amended; (ii) “hazardous wastes”, as defined by the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Sect. 6902 et seq., as amended or hereafter amended; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) any petroleum and/or petroleum by-product material as defined at 42 U.S.C. Sect. 2011, et seq., as amended or hereafter amended; (vi) Asbestos or asbestos-containing materials in any form or condition; (vii) lead-based paint hazards, i.e., any condition that caused exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects; and (viii) any toxic or hazardous mold or other fungus.

**Modification** - (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may be issued only after the effective date of the Agreement.

**Notice of Award** - The written notice by Owner to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions
precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** - A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** - The District with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Owner’s Representative** – The Engineer or such other person appointed by the Owner in writing to serve as an Owner’s Representative.

**Plans** - The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Project** – The facility or improvements generally described in the Invitation to Bid and more specifically detailed in the Drawings, Specifications (and any Addendum thereto), and any other Contract Documents.

**Resident Project Representative** - The authorized representative of Engineer or other Owner’s Representative who is assigned to the site or any part thereof.

**Part** - Section(s) of these General Conditions.

**Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and accepted in writing by the Engineer, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work and accepted in writing by the Engineer.

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

**Subcontractor** - A person 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.
**Substantial Completion** - The Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “Work” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract Documents and the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

### PART 2. PRELIMINARY MATTERS

#### 2.1 DELIVERY OF BONDS

When Contractor delivers the executed Agreement to Owner, Contractor shall also deliver to Owner the Performance, Payment and Warranty Bond.

#### 2.2 EXECUTION AND TRANSMISSION OF DOCUMENTS

A. At least six (6) copies of the Contract Documents will be prepared by Engineer. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance, and submit all copies to Owner within ten (10) days of Notice of Award. The date on the Agreement and Bond forms and the Certification Date on the Power of Attorney shall be left blank for completion by Owner.

B. Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Engineer within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

#### 2.3 COPIES OF DOCUMENTS

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:

- Complete set of project Drawings $50.00
- Complete project Specifications $_______
- Individual sheets of Drawings $2.00
- Individual pages of Specifications $0.75

2.4 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED

The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

2.5 STARTING THE PROJECT

Contractor shall start to perform the Work on the date of the Notice to Proceed or within ten (10) consecutive days thereafter or as otherwise specified in the Notice to Proceed, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.6 BEFORE STARTING CONSTRUCTION

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. Before any Work at the site is started, Contractor shall deliver to Owner, with a copy to Engineer, certificates of insurance (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.

C. Two (2) weeks before any Work at the site is started (unless Owner or Engineer provides in writing for a shorter or longer time period), Contractor shall deliver to Owner, with a copy to Engineer, all permits necessary to conduct the Work, including without limitation
any permits required by the Colorado Department of Public Health and Environment or other governmental agency in connection with the management of wastewater discharge or stormwater runoff.

2.7 PRECONSTRUCTION CONFERENCE

Within twenty (20) days after the effective date of the Agreement, but before Contractor starts the Work at the site, a conference will be held for review and acceptance of the schedules referred to in Section 6.13, to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Partial Payment, and to establish a working understanding among the parties as to the Work.

PART 3. CONTRACT DOCUMENTS: INTENT AND REUSE

3.1 INTENT

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work and supersede any prior agreements or understandings. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result, shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning unless expressly given a different meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall
mean the latest standard specification, manual or code 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.
However, no provision of any referenced standard specification
manual or code (whether or not specifically incorporated by
reference in the Contract Documents) shall change the duties and
responsibilities of Owner, Contractor or Engineer, or any of their
agents or employees from those set forth in the Contract Documents.
Clarifications and interpretations of the Contract Documents shall be
issued by Engineer as provided for in paragraph 9.3.

D. The Contract Documents have been made, executed, and delivered
in the State of Colorado and shall be governed and construed for all
purposes under and in accordance with the laws of the State of
Colorado.

E. The Project Manual consists of Invitation to Bid, Instruction to
Bidders, Bid Form, Bid Bond, Agreement, Performance Payment
and Warranty Bond, General Conditions, Supplementary Conditions,
and Specifications. Should any construction or conditions which are
not thoroughly or satisfactorily stipulated or set forth by the
Specifications be anticipated on any proposed Work, Supplementary
Conditions for such Work may be prepared and attached to the Bid
Proposal Form and Agreement, and shall be considered as part of the
Specifications, the same as though contained fully therein. Should
any Supplementary Condition conflict with the General Conditions,
or the Agreement, the Supplementary Condition will govern.

3.2 REUSE OF DOCUMENTS

Neither Contractor nor any Subcontractor, manufacturer, fabricator,
supplier or distributor shall 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; and they shall not
reuse any of them on extensions of the Project or any other project without
written consent of Owner and Engineer and specific written verification or
adoption by Engineer.

PART 4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE
POINTS

4.1 AVAILABILITY OF LANDS
Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the acquisition of rights-of-way causes unavoidable delay in Contractor’s prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

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

4.2 PHYSICAL CONDITIONS - INVESTIGATIONS AND REPORTS

Owner shall identify and make available to Contractor copies of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness and are not integrated with, incorporated into or otherwise part of the Contract Documents, although such reports may be physically attached to or bound with the Contract Documents.

4.3 UNFORESEEN PHYSICAL CONDITIONS

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents, including without limitation any physical conditions indicating the presence of any Hazardous Materials. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those indicated or referred to in the Contract Documents, and which could
not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. Rock encountered during excavation, expansive soils, and dewatering of soils shall not constitute unforeseen physical conditions pursuant to paragraph 4.3A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation, expansive soils mitigation, or dewatering.

4.4 REFERENCE POINTS

Owner shall provide engineering surveys for construction to establish reference points which, in its 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 shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professionally qualified personnel.

PART 5. BONDS AND INSURANCE

5.1 PERFORMANCE AND OTHER BONDS

A. Contractor shall furnish a Performance, Payment and Warranty Bond, in an amount at least equal to the Agreement Price, including any Modifications, as security for the faithful performance and payment of all Contractor’s obligations under the Contract Documents. This Bond shall remain in effect at least until two (2) years after the date of final payment, or until the two-year correction period in paragraph 13.7 is over, whichever period is longer, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by the Contract Documents and shall be executed by such Sureties authorized to do business in the State of Colorado 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 Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a power
of attorney authorizing the attorney-in-fact to bind the Surety and shall be certified to include the date of the Bond.

B. If the Surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the State of Colorado or it ceases to meet the requirements of paragraph 5.1A, Contractor shall, within five (5) days thereafter, substitute another Bond and Surety acceptable to Owner.

5.2 CONTRACTOR’S INSURANCE REQUIREMENTS

A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extension of the Contract Time through Change Orders and as provided in Paragraph 5.2B, such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers’ compensation, disability and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;

4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;

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

7. Completed operations insurance as specified in Paragraph 5.2B.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in paragraph 5.2E, or as required by law, whichever is greater. All coverages shall be underwritten by carriers authorized to do business in Colorado, with an A.M. Best’s rating of not less than A- and a classification of X or higher, unless otherwise acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days’ prior written notice has been given to Owner and Engineer or at least ten (10) days’ prior written notice has been given to Owner and Engineer in the event of cancellation due to non-payment of premium. “Will endeavor” and “but failure to mail such notice shall impose no obligation of any kind upon the company, its agents, or representatives” or similar clauses shall be deleted from the certificates unless otherwise approved by the Owner. All such insurance shall remain in effect until final payment, and at all times thereafter when Contractor may be correcting, removing or replacing Defective Work in accordance with paragraph 13.7. In addition, Contractor shall maintain such completed operations insurance for at least two (2) years after final payment and furnish Owner with evidence of continuation of such insurance at final payment and two (2) years thereafter.

C. Workers’ compensation shall include “all states” endorsements. To the extent that Contractor’s work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

D. Contractor and its insurer(s), agree to waive all rights of subrogation against the Owner, the Engineer, and their subconsultants, employees, officers and directors, for work performed under this Agreement.
Policies shall also specify that the insurance provided by the Contractor will be considered primary and not contributory to any other insurance available to the Owner or the Engineer.

Contractor shall indemnify, defend and hold harmless the Owner and Engineer for work performed under this Agreement.

E. The limits of liability for Contractor’s Liability Insurance shall not be less than:

1. Workers’ Compensation: Statutory

2. Employers Liability:
   - $100,000 Disease each person
   - $100,000 Each Accident
   - $500,000 Disease Policy Limit

3. Commercial General Liability:
   - Bodily Injury and Property Damage Combined: $1,000,000
      - Per Occurrence
      - Combined Single Limit
      - $2,000,000 General Aggregate
      - $2,000,000 Products/Completed Operations Aggregate

4. Comprehensive Automobile Liability:
   - Bodily Injury and Property Damage Combined: $1,000,000
Per Accident

F. At the option of Contractor, evidence of coverage and limits may be furnished by an umbrella liability policy certificate in addition to certificates for Workers’ Compensation and employer’s liability, and commercial automobile and general liability policies.

5.3 OWNER AND ENGINEER ADDITIONAL INSURED

Contractor shall name Owner and Engineer as Additional Insured under its Commercial General Liability insurance. The liability limits shall be as specified for commercial general liability insurance.

5.4 PROPERTY INSURANCE

A. Owner may, in addition to the Builder’s Risk Insurance and Floater Installation coverages required of the Contractor below, purchase and maintain property insurance upon the Work at the site to the full insurable value thereof. This insurance shall cover only the Owner’s interest in the Work. Such coverage shall insure against the perils of fire and extended coverage, and shall include “all risk” insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including fees and charges of engineers, architects, attorneys and other professionals).

B. Owner may purchase and maintain boiler and machinery insurance upon the Work.

C. If Contractor requests in writing that other special insurance be included in the Owner’s property insurance policy, Owner shall, if possible, include such insurance, and the cost thereof shall be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the site, Owner will in writing advise Contractor whether or not such special insurance has been procured by Owner.

D. Builder’s Risk Insurance.

1. Contractor shall purchase and maintain builder’s risk insurance. This insurance shall be written in completed value form and shall protect Contractor, Owner, Subcontractor(s)
and Engineer against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance or Property, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall be not less than the insurable value of the Work at completion.

2. Builder’s risk insurance shall provide for losses to be payable to Contractor, Owner, and Engineer as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor, Owner, and Engineer.

E. Installation Floater Insurance.

1. Contractor shall purchase and maintain installation floater insurance, unless waived in writing by the Owner. Contractor shall purchase and maintain similar property insurance on behalf of the Owner on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Partial Payment pursuant to Part 14 hereof.

2. Equipment such as pumps, compressors, basin equipment, motors, switchgear, transformers, panel boards, control equipment, and other similar equipment shall be insured under the installation floater insurance when the aggregate value of the equipment exceeds Ten Thousand Dollars ($10,000.00). This insurance shall protect Contractor, Owner, and Engineer from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder’s risk insurance, while in warehouses or storage areas, during installation, during testing, and after the Work is completed. It shall be of the “all risk” type, with coverages designed for the circumstances which may occur in the particular Work included in the Contract Documents. The coverage shall be for an amount not less than the insurable value of the Work at completion, less the value of materials and equipment insured under builder’s risk insurance. The value shall include the aggregate value of the Owner-furnished equipment and materials to be erected or
installed by Contractor not otherwise insured under builder’s risk insurance. Installation floater insurance shall provide for losses to be payable to Contractor, Owner, and Engineer as their interest may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided the insurance company shall have no rights or recovery against the Contractor, Owner, and Engineer.

3. Certificates of Insurance covering installation floater insurance shall quote the insuring agreement and all exclusions as they appear in the policy; or in lieu of certificates, copies of the complete policy may be submitted.

F. Builders risk insurance policies shall contain a provision that the coverage afforded will not be cancelled or materially changed until at least 30 days prior written notice has been given to Owner.

G. Insured losses under policies of insurance which include Owner’s interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner’s exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner and Contractor waive all rights against each other and against Engineer for damages caused by fire or other perils to the extent covered by insurance except such rights as they may have to the proceeds of such insurance held by Owner as trustee. Contractor shall require similar waivers by Subcontractors. Each waiver shall be in favor of all other parties enumerated in this paragraph.

5.5 PARTIAL UTILIZATION - PROPERTY INSURANCE

If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.6A; provided that no such use or occupancy shall commence before the insurers
providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

5.6 ACCEPTANCE OF INSURANCE

If Owner has any objection to the coverage afforded by or other provisions of the insurance purchased and maintained by Contractor on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof within thirty (30) days of the date of delivery of the Opinion required of Contractor’s insurance agent or counsel pursuant to paragraph 5.8. If Contractor has any objection to the coverage afforded by or other provisions of the policies of insurance purchased and maintained by Owner in accordance with paragraph 5.4C on the basis of their not complying with the Contract Documents, Contractor will notify Owner in writing thereof within ten (10) days of the date of delivery of notice that such insurance has been procured by Owner. Owner and Contractor will each provide to the other such additional information in respect of insurance provided by it as the other may reasonably request. Failure by Owner or Contractor to give any such Notice of Objection within the time provided shall constitute temporary acceptance of such insurance purchased by the other as complying with the Contract Documents.

5.7 DEDUCTIBLES

No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than $1,000 or as reasonably approved by Owner.

5.8 CERTIFICATE OF INSURANCE; OPINION OF AGENT

Prior to commencing the Work, the Contractor shall deliver to the Owner a Certificate of Insurance evidencing that the coverages required under part 5, including a representation that the Owner and Engineer have been named as additional insureds under its Commercial General Liability insurance. With the Certificate of Insurance, the Contractor shall also deliver to the Owner an Opinion of a licensed insurance agent or legal counsel that the coverages required under this Part 5 have been purchased and the Contractor is in compliance with its obligations under this Part 5. Such opinion shall be in the form of Exhibit A attached to these General Conditions.

PART 6. CONTRACTOR’S RESPONSIBILITIES

6.1 SUPERVISION AND SUPERINTENDENCE
A. The Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Owner shall not be responsible for Contractor’s means, methods, techniques, sequences or procedures of construction, or for safety precautions and programs incident thereto.

B. Contractor shall supervise and direct the Work competently and efficiently, giving the Work the consistent attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and promptly to supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor’s representative at the site and shall have authority to act on behalf of Contractor. All communications given the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen as are careful and competent, and the Engineer may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work, who shall misconduct Itself or themselves or be incompetent or negligent in the proper performance of its or their duties, or neglect(s) or refuse(s) to comply with the Contract
Documents given, and such person or persons shall not be employed again thereon without the written consent of the Engineer. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Engineer at least forty-eight (48) hours in advance of the time it intends to start Work on the site. The Contractor shall operate at such points as the Owner through the Engineer may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to ensure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Engineer at least forty-eight (48) hours in advance of resuming operations.

6.2 LABOR, MATERIALS, AND EQUIPMENT

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, 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 given after prior written notice to Engineer.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and
machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and approved by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified shall be submitted by the Contractor or producer for examination and tests required by the Engineer. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer at no cost to the Owner.

Samples of all materials for testing, upon which the acceptance or rejection are to be based, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these specifications and which have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work and shall be replaced by the Contractor at no cost to the Owner. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in paragraph 6.13 as it pertains to samples.
Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under the Specifications, shall be in accordance with the most current edition of the standards set forth in the Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall be checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site, and for protection of the project, and shall hold Owner and Owner’s authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the project site by Contractor without the prior written approval of Owner.

G. All materials not conforming to the requirements of these Specifications shall be considered Defective. Whether in place or not, such material shall be removed immediately from the site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer made
under the provisions of this Article, the Engineer shall have authority to remove Defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

6.3 EQUIVALENT MATERIALS AND EQUIPMENT

Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in paragraphs 6.3A. and 6.3B. below, as supplemented in the other Contract Documents.

A. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The Application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the Application and available maintenance, repair and replacement service will be indicated. The Application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change; all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer’s prior written acceptance. Owner may require Contractor
to furnish at Contractor’s expense a special performance guarantee or other Surety with respect to any substitute.

B. Engineer will record time required by Engineer and Engineer’s consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer’s consultants for evaluating any proposed substitute.

6.4 CONCERNING SUBCONTRACTORS

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject Defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, 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 Subcontractor or other person or
organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done.

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

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate Agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other Contractors or Subcontractors as may be performing work or supplying materials in connection with the Project, and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the project site by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

6.5 PATENT FEES AND ROYALTIES

If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the Surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention,
product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this Contract, and shall indemnify the Owner and Engineer for any costs, expense and damages, including attorney’s fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work.

6.6 PERMITS

Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, including but not limited to all inspection charges of agencies having appropriate jurisdiction and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto; provided, however, that in the event the applicable utility company charges the Owner for connections and capital costs, the Agreement Price shall be reduced by an amount equivalent to the utility’s charge for connections to the work. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time.

6.7 LAWS AND REGULATIONS

Contractor shall be familiar with all federal, state and local laws, ordinances, and rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (collectively, “the applicable regulations”). If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Engineer prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents, and the Contractor and its Surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents, and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

6.8 TAXES
A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said Certificates.

6.9 USE OF PREMISES

A. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents. Materials cleared from the site and deposited on property adjacent will not be considered as having been disposed of satisfactorily.

C. Contractor shall not load or 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.

D. All structures or obstructions found on the site and shown on the Contract Drawings which are not to remain in place, or which are not to be used in the new construction, shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the
price bid for that portion of the Work requiring the removal of the obstruction. All material found on the site or removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specification that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings without prior consent by the Engineer.

6.10 RECORD DOCUMENTS

Contractor shall keep one record of all Specifications, Drawings, Addenda, Modifications, Shop Drawings and samples at the site, in good order and annotated, and updated weekly to show all changes made during the construction process. These shall be available to Engineer for examination and shall be delivered to Engineer for Owner upon completion of the Work. All changes of drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

6.11 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 employees on the Work or other persons who may be affected thereby;

2. All the Work and all materials or 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 and utilities not designated for removal, relocation or replacement in the course of construction.
The Contractor shall be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including the safety of all persons who may enter on the job site for any reason and the security of all property located on the job site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them 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 utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in paragraphs 6.11A.2 or 6.11A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, 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 anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor’s duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor’s superintendent, unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the site, of providing required safety instruction for Contractor’s Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily and other inspections of the work site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor’s obligation to indemnify Owner pursuant to paragraph 5.2D shall include failure of Contractor to effect full compliance with OSHA regulations.
E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service, except after permission has been granted by the Engineer. Each item of Work shall be prosecuted to completion without delay; and, in no instance, will the Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer. The Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highways. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and
whenever evidence of such damage is found prior to acceptance, the Engineer may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor’s responsibility for necessary barricades, signs, and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction over the Project.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representatives of any public service corporation, any company, or any individual, at least eight (8) hours in advance of any blasting which may damage its or their property on, along, or adjacent to the site. All explosives shall be stored in a secure manner, and all storage places shall be marked clearly “DANGEROUS EXPLOSIVES,” and shall be in care of competent watchmen at all times.

6.12 EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written Notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by
both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed and field verification of all dimensions, locations, levels, etc. to suit field conditions is directed. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The Drawings detailing mechanical systems shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation, shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Approved Plans shall be in writing and approved by the Engineer. When at any time reference is made to “The Plans,” the interpretations shall be the Plans as affected by all authorized alterations then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawings submissions, six (6) copies (unless otherwise specified in the Special Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer’s attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer’s review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to
The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer’s review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor’s stamp of approval on any Shop Drawings or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed by Engineer.

H. Engineer’s review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has, in writing, called Engineer’s attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all shop drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Approved Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plans and Specifications, and all supplementary plans and documents, are essential parts of the Contract Documents, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of
any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately call upon the Engineer for its interpretation and Engineer’s decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

6.14 CONSTRUCTION STAKES

A. Unless otherwise directed in the Supplementary Conditions, the Contractor will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Owner will provide basic horizontal and vertical control. If construction surveys are provided by the Owner, the Contractor shall request that Owner provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor’s expense at the current billable rate for a three-person survey crew, unless the stakes were removed or destroyed by causes beyond the Contractor’s control. Said cost may be deducted from any funds due the Contractor.

6.15 PRIVATE PROPERTY AND EXCAVATION

The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor’s manner, or method of executing said Work, or due to its or any Subcontractor’s non-execution of said work, or any time due to Defective Work or materials, and said responsibility shall not be released until the Work has been
completed and accepted. The Contractor’s attention is directed to the importance of protecting all public utilities encountered on the Project. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding or otherwise restoring, as may be directed, or it shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer may, upon forty-eight (48) hours’ notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract Documents. The cost of damages due to Contractor’s operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Contract prices for the Project.

6.16 ENVIRONMENTAL REQUIREMENTS

Any Hazardous Materials at the site as a result of performance of the Work shall be stored in a safe manner according to the approval of the local fire marshal. Contractor shall comply, and take all necessary actions to cause its or its subcontractors performance of the Work to comply with all applicable federal, state and local requirements relating to the site and the Work. Contractor is responsible for, and agrees to hold harmless, indemnify and defend Owner from any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney’s fees, caused by or related to Contractor’s delivery, storage or use of Hazardous Materials in or on the site caused by Contractor’s acts or those of Contractor’s agents, employees, subcontractors, suppliers, shippers, or invitees which result in violation of any such laws. To the extent Contractor or Contractor’s agents, employees, subcontractors, suppliers, shippers, or invitees cause or allow the presence of or places Hazardous
Materials in or on the site or surrounding area or violate any such laws, Contractor at its sole cost and expense shall promptly take any and all actions necessary or required to return the site to the condition existing prior to such placement of the Hazardous Materials including the cost of required subsequent monitoring of such spill; in any such event, Contractor shall be liable for any related claims, losses, liabilities, damages, costs and expenses, which may include monitoring and testing of the contaminated site, including reasonable attorney’s fees, and/or investigating and in complying with any governmental order (federal, state and/or local).

6.17 ILLEGAL ALIENS

A. The Contractor certifies that the Contractor shall comply with the provisions of Section 8-17.5-101 et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an agreement with a subcontractor that knowingly employs or contracts with an illegal alien. The Contractor represents, warrants, and agrees that it (i) has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise will comply with the requirements of Section 8-17.5-102(2)(b), C.R.S. The Contractor shall not use Basic Pilot Program Procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall: (i) notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or Section 8-17.5-101 et seq., C.R.S., the Owner may terminate this Agreement for breach
and the Contractor shall be liable for actual and consequential damages to the Owner.

B. Contractor, if operating as a sole proprietor, hereby swears or affirms under penalty of perjury that Contractor (i) is a citizen of the United States or legal permanent resident or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of Section 24-76.5-101 et seq., C.R.S., and (iii) shall produce one of the forms of identification required by Section 24-76.5-103, C.R.S., prior to the performance of any of its other obligations hereunder.

PART 7. COORDINATION OF WORK

7.1 OWNER’S RIGHT TO PERFORM

Owner may perform additional work related to the Project by itself, or have additional work performed by utility service companies, or let other direct contracts therefor which shall contain General Conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional work with Owner’s employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

7.2 CONTRACTOR TO COORDINATE

A. If any part of Contractor’s Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor’s failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor’s Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render it responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any project 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.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in the Contractor’s prosecution of the Work, Contractor may make a claim therefor as provided in Parts 11 and 12 respectively.

PART 8. OWNER’S RESPONSIBILITIES

8.1 OWNER TO COMMUNICATE THROUGH ENGINEER OR OWNER’S REPRESENTATIVE

Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer or the Owner’s Representative.

PART 9. STATUS OF ENGINEER DURING CONSTRUCTION

9.1 DUTIES OF ENGINEER

Engineer will be Owner’s Representative during the construction period unless the Owner shall designate in writing another Owner’s Representative. The duties and responsibilities and the limitations of authority of Owner’s Representative during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

9.2 VISITS TO SITE

Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer
will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

9.3 CLARIFICATIONS AND INTERPRETATIONS

Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

9.4 REJECTING DEFECTIVE WORK

Engineer will have authority to disapprove or reject Work which is Defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.4B., whether or not the Work is fabricated, installed or completed.

9.5 PROJECT REPRESENTATION

Engineer will furnish a Resident Project Representative, if required by the Owner, to assist Engineer in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in Part 22.

9.6 DECISIONS ON DISAGreements

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge, 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 and in accordance with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Agreement, the rendering of a decision by Engineer pursuant to paragraph 9.6A. 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 14.11) or the determination by Engineer that it shall not render a decision with respect thereto, 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 at law in respect of any such claim, dispute or other matter.

9.7 LIMITATIONS ON ENGINEER’S AND OWNER’S RESPONSIBILITIES

A. Neither Engineer’s nor Owner’s authority to act under this Part 9 or elsewhere in the Contract Documents, nor any decision made by Engineer or Owner in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.7C. or 9.7D.

C. Engineer will not be responsible for Contractor’s means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be
D. Neither Engineer nor Owner will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor of Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

PART 10. CHANGES IN THE WORK

10.1 OWNER MAY ORDER CHANGES

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12 on the basis of a claim made by either party.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time, and which are consistent with the overall intent of the Contract Documents. Only changes authorized by a Change Order or Field Order shall be binding on the Owner. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order. If, notwithstanding this Paragraph 10.1 B., a Field Order causes unavoidable additional expense or unavoidable delay in Contractor’s prosecution of the Work, Contractor may make a claim therefor as provided in Part 11 or Part 12, respectively.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.12.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor’s responsibility to so notify the Surety, and the amount of each applicable Bond shall
be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the parties may proceed to Dispute Resolution. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the site by the Owner or any other contractor engaged by Owner to perform said Work.

PART 11. CHANGE OF AGREEMENT PRICE

11.1 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner or by a Change Order issued pursuant to paragraph 11.1C. When a price for extra or changed Work by way of a Change Order has been issued under paragraph 11.1C, Contractor and Owner agree that the price set forth in the Change Order shall include the cost of the extra or change, plus any direct, indirect, and impacted costs attributable to the change or extra. In the event that there is an immediate need for a Change Order involving a change in the Agreement Price, a Change Order may be approved by the Owner’s Representative and the Engineer, subject to the following conditions: (1) the Owner’s Representative must obtain and document the oral approval of one member of the Owner’s Board of Directors to the Change Order; (2) the Contractor must approve the Change Order; and (3) the amount of the aggregate value of any Change Orders issued under this immediate need may not exceed, within any 30 day period, $200,000 or five percent (5%) of the Agreement Price, whichever is less.
C. The Owner, through the Engineer, may request changes to the Agreement for additional work or in response to claims by Contractor. All Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer shall submit to the Contractor a “Request for Proposal” outlining the scope of work contemplated for said construction changes.

2. The Contractor shall submit within fourteen (14) days of receipt of a “Request for Proposal” a complete cost and fee and time extension analysis for the proposed change which shall include:
   a. Detailed itemization of materials and labor estimated for said work;
   b. Detailed itemization from all Subcontractors for their respective labor and materials for said work;
   c. Copies of quotations from suppliers substantiating all materials and equipment costs;
   d. Itemization of overhead and fees in accordance with Paragraph 11.3A;
   e. Any request for Contract Time extension with all substantiating rationale therefor.

D. Contractor shall be entitled to submit a claim for additional compensation for changes ordered by Owner through a Change Order, if such Change Order does not contain an agreed-upon adjustment, and for changes ordered by Engineer through a Field Order, subject to the provisions of the Contract Documents. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Contract Documents, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The
filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to provide the validity of the claim. When such Work has been completed, the Contractor shall within fifteen (15) days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer’s recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On the basis of the estimated Cost of the Work (determined as provided in paragraphs 11.1C.) plus a Contractor’s Fee for overhead and profit (determined as provided in paragraph 11.3A.);

2. By mutual acceptance of a lump sum.

11.2 COST OF THE WORK

A. 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. 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, and shall include only the following items, and shall not include any of the costs itemized in paragraph 11.2B. Whenever the cost of any work is to be determined pursuant to paragraphs 11.2A. and 11.2B., Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data:

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. Payroll cost 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, and workers’ or workmen’s compensation.
Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on 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 manufacturers’ 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 all 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 the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a 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 shall be determined in the same manner as Contractor’s Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

5. Supplemental costs include the following:
   a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, 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.
b. 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, installation, dismantling and removal thereof — all in accordance with 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.

c. Any sales, use or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

d. Deposits lost for causes other than Contractor’s negligence, royalty payments and fees for permits and licenses.

e. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor’s Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in paragraph 11.3A.

f. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

g. The proportion of necessary transportation, travel and subsistence expenses of Contractor’s employees incurred in discharge of duties connected with the Work.
h. The cost of utilities, fuel and sanitary facilities at the site.

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

B. The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of Contractor’s officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.2A.1. – 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. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

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

6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.2A.
11.3 CONTRACTOR’S FEE

A. The Contractor’s Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:

   a. For costs incurred under paragraphs 11.2A.1. and 11.2A.2., the Contractor’s Fee shall be ten percent (10%); and

   b. For costs incurred under paragraph 11.2A.3., the Contractor’s Fee shall be five percent (5%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%) as set forth in Paragraph 11.3A.1.a.; and

   c. No fee shall be payable on the basis of costs itemized under paragraphs 11.2A.4., 11.2A.5., and 11.2B.

   d. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the net increase, if any.

11.4 ADJUSTMENT OF THE UNIT PRICE

Where the quantity of Work with respect to any item that is covered by a unit price differs materially and significantly from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order shall be issued on recommendation of Engineer to adjust the unit price.

PART 12. CONTRACT TIME AND CHANGES

12.1 DETERMINATION AND EXTENSION OF CONTRACT TIME

The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar
days shall start on the first calendar day after the last permissible starting
date as set forth in the Notice to Proceed. If the satisfactory execution and
completion of the Work shall require Work or materials in greater amounts
or quantities than those set forth in the Contract Documents, then the
Contract Time may be increased as negotiated between Contractor and
Engineer and accepted by Owner as set forth in a Change Order. No
allowances will be made for delays or suspensions of the prosecution of the
Work due to the fault of the Contractor.

12.2 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER

A. The Contract Time may be changed only by a Change Order. If
Contractor desires to make a claim for an extension in the Contract
Time, it shall give immediate verbal notification to Engineer
followed by written notice delivered to Owner and Engineer within
five (5) days of the occurrence of the event giving rise to the Claim.
Notice of the extent of the claim with supporting data shall be
delivered within fifteen (15) days of such occurrence, unless
Engineer allows an additional period of time to ascertain more
accurate data. All claims for adjustment in the Contract Time shall
be determined by Engineer if Owner and Contractor cannot
otherwise agree. Any change in the Contract Time resulting from
any such claim shall be incorporated in a Change Order. In the
event that there is an immediate need for a Change Order involving a
change in the Contract Time, a Change Order may be approved by
the Owner’s Representative and the Engineer, subject to the
following conditions: (1) the Owner’s Representative must obtain
and document the oral approval of one member of the Owner’s
Board of Directors to the Change Order; (2) the Contractor must
approve the Change Order; and (3) the aggregate amount of the time
extensions of any Change Orders issued under this paragraph
12.2A.2 may not exceed, within any thirty (30) day period, ten (10)
days.

B. Where, due to delays beyond the control of Contractor which cause
unavoidable delay to the Contractor’s prosecution of the Work,
Contractor is prevented from completing any part of the Work
within the Contract Time or within scheduled milestones, Contractor
shall be entitled to request an extension of time equal to the time
unavoidably lost if Contractor makes a claim therefor as provided in
paragraph 12.1. Such delays may be caused by acts or omissions of
the Owner or others performing Work as contemplated by Part 7, or
to fires, floods, labor disputes, epidemics, acts of God, or to
abnormally inclement weather conditions. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the latest ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

C. All the time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Part 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

PART 13. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.1 WARRANTY AND GUARANTEE

Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be Defective. Four (4) copies of all manufacturer’s guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

13.2 ACCESS TO WORK

Engineer and Engineer’s representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

13.3 TESTS AND INSPECTIONS

A. Contractor shall give Engineer timely Notice of Readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall
assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner’s or Engineer’s acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor’s purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor’s expense unless Contractor has given Engineer timely Notice of Contractor’s intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Resident Project Representative be on the job. All inspection so required shall be done at the Contractor’s expense at Resident Project Representative’s current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 48 hours in advance of starting any such overtime Work.

13.4 UNCOVERING WORK

A. Pursuant to Section 13.3D hereof, 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, Engineer shall issue a Field Order so directing and Contractor shall thereupon 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 bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory correction or reconstruction of the Defective work, including, for all of the foregoing tasks, compensation for additional professional services. Contractor shall not request payment for, nor shall Contractor be entitled to, compensation for such expenses. If the Work is found not to be Defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within twenty (20) days of performing any such tasks.

13.5 OWNER MAY STOP THE WORK

If the Work is Defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to furnish or 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 or any other party.

13.6 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any Defective Work, whether or not fabricated, installed or completed; or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-Defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to
prices, will be done at the Contractor’s risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for, and may be ordered removed and replaced at the Contractor’s expense.

13.7 TWO-YEAR CORRECTION PERIOD

If within two (2) years after the date of final payment or such longer period of time as may be prescribed by law, or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents (unless establishment of a shorter correction period is made by Addendum), any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions within seven (7) days after Owner’s issuance of written instructions, correct the Defective Work at Contractor’s cost. 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 the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other work, other property or persons which occurred as a result of the Defective Work within the correction period.

13.8 ACCEPTANCE OF DEFECTIVE WORK

If, instead of requiring correction or removal and replacement of Defective Work, Owner prefers to accept it, Owner may do so. In such case, if acceptance occurs prior to Engineer’s recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

13.9 OWNER MAY CORRECT DEFECTIVE WORK

If Contractor fails within a reasonable time after written Notice of Engineer to proceed to correct and to correct Defective Work or to remove and replace rejected Work as required by Engineer in accordance with paragraph 13.6 or in accordance with paragraph 13.7, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven (7) days’ written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph, Owner shall proceed
expeditiously. To the extent necessary to complete 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 such access to the site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor’s Defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner’s rights hereunder.

PART 14. CONSTRUCTION SCHEDULE, SCHEDULE OF VALUES, PAYMENTS TO CONTRACTORS AND COMPLETION

14.1 SCHEDULES

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, and significant milestone events; a schedule for Shop Drawing submission; and a schedule of values. These schedules shall be satisfactory in form and substance to the Owner and the Engineer, and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner’s concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner’s review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the schedule of values, as set forth herein, and not
according to the progress schedule. The Contractor shall revise the progress schedule if so requested by Owner.

B. The schedule of values shall indicate quantities and unit prices aggregating the Agreement Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by Engineer and Owner, the schedule shall be incorporated into the form for Application for Partial Payment and such form shall be subject to Engineer’s and Owner’s reasonable approval. The Contractor shall revise the schedule of values if requested by Owner. The Contractor may include on its Application for Partial Payment, payment for materials stored at the construction site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances.

14.2 APPLICATION FOR PROGRESS PAYMENTS

A. At least ten (10) days before each progress payment falls due (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Partial Payment completed 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, and also as Engineer may reasonably require. Each subsequent Application for Partial Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor’s obligations reflected in prior Applications for Partial Payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. The determination of quantities of Work acceptably completed under the terms of the Contract Documents will be made by the Engineer and based on measurements taken by it or its assistants. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on Plans or specified. Structures shall be measured as shown on the Plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly
marked on said vehicle, and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment, except final payment, will be made for a sum of less than $1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate rendered following discovery of an error in any previous estimates. Should any Defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work, an amount equal in value to the Defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

14.3 CONTRACTOR’S WARRANTY OF TITLE

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 at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as “Claims”).

14.4 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

A. Engineer will, within ten (10) days after receipt of each Application for Partial 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. The Owner shall pay Contractor within forty-five (45) days of Owner’s approval of the Application for Partial Payment.

B. Engineer’s recommendation of any payment requested in an Application for Partial Payment will constitute a representation by Engineer to Owner, based on Engineer’s on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer’s review of the Application for Partial Payment and the accompanying data and schedules, that the Work has progressed to the point indicated, and that, to the best of Engineer’s knowledge, information, and belief, the quality of the
Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation). However, by recommending any such payment, Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Engineer may refuse to recommend, and the Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer’s or Owner’s opinion to protect Owner from loss because:

1. The Work is Defective, or completed Work has been damaged requiring correction or replacement;
2. Written Claims have been made against Owner or Claims have been filed in connection with the Work;
3. The Agreement Price has been reduced because of Modifications;
4. Owner has been required to correct Defective work or complete the Work in accordance with paragraph 13.9;
5. Of Contractor’s unsatisfactory prosecution of the Work in accordance with the Contract Documents; or
6. Of Contractor’s failure to make payment to Subcontractors for labor, materials or equipment.

D. Any time Engineer recommends the Owner pay any payment requested in an Application for Partial Payment, Engineer shall also
confirm that all Work, material and equipment covered by such Application for Payment will be adequately insured after title to the same passes to the Owner pursuant to paragraph 14.3.

14.5 SUBSTANTIAL COMPLETION

When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a Certificate of Substantial Completion. Within a reasonable time 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 its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a Certificate of Substantial Completion. There shall be attached to the Certificate a punchlist of items to be completed or corrected before Project completion and final payment.

14.6 PARTIAL UTILIZATION

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete, and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner’s use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within fifteen (15) days of receiving Engineer’s recommendations. Owner shall have the right to exclude Contractor from any part of the Work which
Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative list.

2. In lieu of the provisions of paragraph 14.6A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete, if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing, have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

14.7 FINAL INSPECTION

Upon written notice from Contractor that the Work is complete and that all items on the punch list have been completed, Engineer will 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 remedy such deficiencies.

14.8 FINAL APPLICATION FOR PAYMENT

After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents – all as required by the Contract Documents; and after Engineer has indicated that the Work is acceptable (subject to the provisions of paragraph 14.11), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, including, at Owner’s
option, complete and legally effective releases or waivers (satisfactory to Owner) of all Claims arising out of or filed in connection with the Work. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a Claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Claim.

14.9 FINAL PAYMENT AND ACCEPTANCE

A. 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 – all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Engineer will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of paragraph 14.11 (such written notice hereinafter referred to as a Notice of Acceptability). Otherwise, Engineer will return the Application 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. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days thereof, cause publication to commence of Notice of Final Settlement, in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the Engineer in accordance with the Notice of Final Settlement. In the event any claim is made against Contractor, Owner may withhold up to twice the amount of any asserted claim against Contractor until said claim has been resolved, together with other amounts permitted by the Agreement and Part 18 hereof;
however, Owner shall pay Contractor the balance of the final payment net of the withheld amount.

B. 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, 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. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.10 CONTRACTOR’S CONTINUING OBLIGATION

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or its Surety, and final payment has been made by Owner. The Surety Bond executed for performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of final payment.

B. Notwithstanding the provision of paragraph 14.10A., Contractor’s obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to paragraph 14.9A., nor any correction of Defective Work by Owner, shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor’s obligation to perform the Work in accordance with the Contract Documents.
14.11 WAIVER OF CLAIMS

The making and acceptance of final payment shall constitute:

A. A waiver of all claims by Owner against Contractor, except claims arising from unsettled claims, from Defective Work appearing from final inspection pursuant to paragraph 14.7, or from failure to comply with the Contract Documents or the terms of any guarantee or warranty specified therein; however, it shall not constitute a waiver by Owner of any rights in respect of Contractor’s continuing obligations under the Contract Documents; and

B. A waiver of all claims by Contractor against Owner other than those previously made in writing and identified by the Contractor as unsettled at the time of the Final Application for Payment.

PART 15. SUSPENSION OF WORK AND TERMINATION

15.1 ENGINEER OR OWNER MAY SUSPEND WORK

A. The Engineer, in consultation with Owner when time permits, shall have the authority to immediately suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor properly to prosecute the Work in accordance with the Contract Documents, to carry out orders or to remove Defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to reestablish observation and inspection of Work being performed.

B. In the event Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such compensation shall be filed with the Engineer within ten (10) days after date of the order to resume Work, or such claims will not be considered. The Contractor shall submit with its claims, substantiating documents covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the
claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to whether such claim is equitable and such decision shall be final. No provision of this Article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure of surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may, at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to any suspension if it makes a claim therefor as provided in Parts 11 and 12.

15.2 OWNER MAY TERMINATE

A. Upon the occurrence of any one or more of the following events, Owner may terminate the Agreement if:

1. Contractor is adjudged bankrupt or insolvent,

2. Contractor makes a general assignment for the benefit of creditors,

3. A trustee or receiver is appointed for Contractor or for any of Contractor’s property,

4. Contractor files a petition to take advantage of any debtor’s act, or to reorganize under the bankruptcy or similar laws,

5. Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,

6. Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,

7. Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,

8. Contractor disregards the authority of Engineer,
9. Contractor fails to start the Work on the date given in the Notice to Proceed,

10. Substantial evidence that progress being made by the Contractor is insufficient to complete the Work within the specified time,

11. Contractor deliberately fails to observe any requirement of the Contract Documents,

12. Contractor fails promptly to make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,

13. Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or


B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this is given, if a satisfactory effort has not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until it is finally completed. Owner may exclude Contractor from the site and take possession of the Work and 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 Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and
charges of engineers, architects, and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor’s services have been so terminated by Owner, the termination shall not affect any rights 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.

D. Upon seven (7) days’ written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, Contractor shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.

15.3 CONTRACTOR MAY STOP WORK OR TERMINATE

If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Partial Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days’ written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days’ written notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under paragraph 21.1C. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

15.4 OWNER MAY TERMINATE FOR CONVENIENCE

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause, and in the Owner’s sole and absolute discretion. Such termination
may be in whole, or from time to time in part. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor specifying the extent to which performance of Work under the Contract is terminated and the date upon which termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination.

4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner, and deliver in this manner, at the times, and to the extent, if any, directed by the Owner:

   a. The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and

   b. The completed or partially completed Plans, drawings, information, and other property which, if the Project
had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to above in Paragraph 15.4B.6., but the Contractor:

a. Shall not be required to extend credit to any purchaser; and

b. May acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents, or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents, or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Owner its termination claim, in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within a one (1) year period from the effective date of the termination or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to it, the amount, if
any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination, and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the Notice of Termination the total (without duplication of any items) of:

   a. The cost of such Work.

   b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as paragraph 15.4B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the Notice of Termination. These amounts shall be included in the cost on account of which payment is made.
c. The reasonable cost of the preservation and protection of property incurred and any other reasonable costs incidental to termination of the Work under the Contract Documents, including expense incidental to the determination of the amount due to the Contractor as a result of the termination of Work under the Contract Documents.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner or to a Buyer under paragraph 15.4B.7. of this Part 15. If the parties do not reach agreement under Paragraph 15.4D., and the Owner utilized this Paragraph 15.4E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.

F. The Contractor shall have the right to dispute under the Disputes provision any determination the Owner makes under this Part 15. But, if the Contractor has failed to submit its claim within the time provided in paragraph 15.4C and has failed to request an extension of time, it shall have no such right of appeal. In any case where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or

2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment, as may be agreed upon, shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established Contract Price for the continued portion.

PART 16. MISCELLANEOUS

16.1 GIVING NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, it shall 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 address identified in Part 17 hereof. Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

16.2 COMPUTATION OF TIME

When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

16.3 CORRECTION PERIOD
Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within which proceedings may be commenced to establish Contractor’s liability with respect to its obligations other than specifically to correct the Work.

16.4 GENERAL

A. Should Owner or Contractor suffer injury or damage to its persons or property because of any error, omission or act of the other party or of any of the other party’s employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto; and, in particular, but without limitation, the warranties, guarantees and obligations imposed upon Contractor by paragraphs 5.4, 13.1, 13.6, 13.9, 14.3, and 15.2A. and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall 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. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner’s determination and Contractor shall have fifteen (15) days from the issuance of Owner’s notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have
the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project, and then determine what amounts, if any, are due Contractor.

D. The Parties intend that the indemnification and insurance provisions of the Contract Documents shall be applied consistent with and limited by the provisions of Section 13-21-111.5(6), C.R.S.

PART 17. ADDRESSES

17.1 OWNER

Owner is the District named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to Owner shall be addressed and delivered to Owner at the address indicated in the Agreement, with one (1) copy to Engineer.

17.2 ENGINEER

All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address indicated in the Contract Documents.

17.3 CONTRACTOR

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.

17.4 CHANGE OF ADDRESS

Either Owner, Contractor, or Engineer may change its address at any time by an instrument in writing delivered to the other two.

PART 18. LIQUIDATED DAMAGES

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract
Documents within the specified time limits set forth in the Contract Documents for such performance and completion, or within such further time as, in accordance with the provisions of the Contract Documents, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits, and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due the Contractor, or by an action at law against the Contractor or its Surety, or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to It.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one Contractor for the delay shall be determined by, and in the judgment of, Engineer.

PART 19. EXISTING UNDERGROUND INSTALLATIONS

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. Generally, service connections are not indicated on the Drawings.
B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground installations.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

PART 20. STREAMLINED SPECIFICATIONS

 Portions of the Contract Documents are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases “The Contractor shall,” “in conformity therewith,” “shall be,” “as shown on the Drawings,” “a,” “an,” “the,” and “all” are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

PART 21. HANDLING OF DISPUTES

21.1 DISPUTES

A. Any claim, dispute, or other matter in question between the Contractor and the Owner and relating to the acceptability of the Work or the interpretation of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer, as specified in Section 9.6. Any such claim for which Engineer has rendered a decision, or any other claim between the Owner and Contractor, may be submitted to alternative dispute resolution, including arbitration or mediation, or any other dispute resolution process, excluding litigation, upon the mutual consent of the parties. The parties shall determine whether any such arbitration shall be binding or non-binding. Neither party shall be compelled to participate in any alternative dispute resolution process, and nothing in this paragraph shall preclude either party from pursuing any legal remedy available to it, subject to the conditions of Paragraph 9.6B.
B. If the parties agree to submit a claim, dispute, or other matter to arbitration, the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining shall be used, unless the parties mutually agree otherwise. An award rendered by an arbitrator or arbitrators in a binding arbitration shall be final and binding on all parties to the extent and in the manner provided by the Colorado Rules of Civil Procedure. All awards may be filed with the clerk of one or more courts, State or Federal, having jurisdiction over the party or parties against whom such award is rendered or its property, as a basis of judgment, and of the issuance of execution for its collection.

C. The Contractor shall continue to perform the Work and adhere to the Contractor’s construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

21.2 DISPUTES WITH THIRD PARTIES

A. All disputes which involve parties in addition to the Owner, Engineer and Contractor shall not be the subject of arbitration, except by the mutual consent of all the parties involved in the dispute.

B. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

PART 22. DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE (IF ANY)

22.1 DESCRIPTION

Resident Project Representative is Engineer’s Agent and shall act as directed by and under the supervision of Engineer. He shall confer with Engineer regarding his actions. His dealings in matters pertaining to the on-site Work will, in general, be only with Engineer and Contractor. His dealings with Subcontractors will only be through or with the full knowledge of Contractor or his superintendent. He shall generally communicate with Owner only through, or as directed by, Engineer.

22.2 DUTIES AND RESPONSIBILITIES
A. Conferences: Attend pre-construction conferences and regular project review meetings.

B. Liaison.
   1. Serve as Engineer’s liaison with Contractor, working principally through Contractor’s superintendent and assist it in understanding the intent of the Contract Documents.
   2. As requested by Engineer, assist in obtaining from Owner additional details or information, when required at the job site for proper execution of the Work.
   3. In the interest of preserving the proper channels of communication, advise Engineer of any direct communication between Owner and Contractor.

C. Shop Drawings and Samples.
   1. Receive and record date of receipt of Shop Drawings and samples which have been reviewed by Engineer.
   2. Receive samples which are furnished at the site by Contractor for Engineer’s review, and notify Engineer of their availability for examination.
   3. Advise Engineer and Contractor or his superintendent immediately of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been accepted by Engineer.

D. Review of Work.
   1. Conduct on-site observations of the Work in progress to assist Engineer in determining that the Project is proceeding in accordance with the Contract Documents, and the completed Work will conform to the Contract Documents.
   2. Report to Engineer whenever He believes that any Work is unsatisfactory, faulty, or Defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspections, tests, or approvals required to be made, and advise Engineer when He believes Work should be corrected or rejected, or should be uncovered for observation, or requires special testing or inspection.
3. Verify that tests, equipment, and systems start-ups and operating and maintenance instructions are conducted as required by the Contract Documents and in presence of the required personnel, and that Contractor maintains records thereof; observe, record, and report to Engineer appropriate details relative to the test procedures and start-ups.

4. Accompany Owner and visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections and report to Engineer.

5. Interpretation of Contract Documents: Transmit to Contractor clarification and interpretation of the Contract Documents as issued by Engineer.

6. Modifications: Consider and evaluate Contractor’s suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

7. Records:
   a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and sample submissions, reproductions of original Contract Documents, including all addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Agreement, Engineer’s clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
   b. Keep a diary or log book, recording hours on the job site, weather conditions, data relative to questions of extras or deductions, list of principal visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures. Send copies to Engineer.
   c. Record names, addresses, and telephone numbers of all Contractors, Subcontractors, and major suppliers of equipment and materials.
d. Advise Engineer whenever Contractor is not currently maintaining an up-to-date copy of Record Drawings at the site.

8. Reports: Furnish Engineer daily and weekly reports as required to represent the status of the Work and of Contractor’s compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.

9. Guarantees, Certificates, Maintenance, and Operation Manuals: During the course of the Work, verify that guarantees, certificates, maintenance, and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed; and deliver these data to Engineer for his review and forwarding to Owner prior to final acceptance of the Project.

10. Completion:
   a. Conduct final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be corrected.
   b. Verify that all items on final list have been corrected and make recommendations to Engineer concerning acceptance.

22.3 LIMITATIONS OF AUTHORITY

A. Resident Project Representative shall be limited in authority except upon written instructions of Engineer.

B. The Resident Project Representative shall not:

   1. Authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
   2. Undertake any of the responsibilities of Contractor, Subcontractor, or Contractor’s superintendent.
   3. Advise on or issue directions as to safety precautions and programs in connection with the Work.
PART 23. DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER’S REPRESENTATIVE

23.1 DESCRIPTION

This Part 23 shall be applicable to the extent the Owner appoints an Owner’s Representative separate from the Engineer. The Owner’s Representative is the Owner’s agent and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

23.2 DUTIES AND RESPONSIBILITIES

Owner’s Representative shall coordinate all construction activities and Owner Purchase Agreements. It shall:

A. Conferences: Attend pre-construction conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required, and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

B. Liaison: Serve as Owner’s liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

C. Modifications: Consider Contractor’s suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

D. Reports:

1. Furnish Owner with periodic reports of progress of work and of Contractor’s compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.

2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

E. Payment Requisitions: In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the
established procedure for its submission and forward it with recommendation to the Owner for payment.

23.3 LIMITATIONS OF AUTHORITY

Owner’s Representative shall be limited in authority, except upon written instructions of Owner as follows:

1. Except as provided in paragraph 11.1B. and paragraph 12.2A., shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.

2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor’s superintendent.

3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.
[OWNER’S ADDRESS]

RE: Bond and Insurance Requirements Under Part 5 of General Conditions/_______________ Project

Dear _________:

We have been retained by _________ (“Contractor”) to advise and assist it in procuring the bonds and insurance coverage required under Part 5 of the General Conditions entered into by you and the Contractor with respect to the _________________ project. Notwithstanding anything in any Certificate of Insurance to the contrary, it is our opinion, as of the date of this letter, that the Contractor is in full compliance with its obligations under part 5 of the General Conditions [except that the Contractor has not complied with the specific requirements identified below]:

[Identify with specificity any provisions of part 5 which are not complied with]

Sincerely yours,
DESCRIPTION

This work will consist of the installation of approximately 553 lineal feet of 8 inch and 144 lineal feet of 4 inch DIP water distribution line; and 422 lineal feet of 6 inch HDPE drain piping. The work will include the construction of a 250,000 gallon concrete water storage tank and all necessary appurtenances.

The work will consist of five different phases that will possibly be broken into 2 separate contracts per the “Bid Schedule” at the discretion of the District Board.

PHASE 1 CONTRACT 1: CONSTRUCT 8” DIP MAIN LINE
PHASE 2 CONTRACT 2: CONCRETE TANK SITEWORK AND EXCAVATION

The contractor(s) shall provide all labor, tools, equipment and material for the complete construction of each phase of work as shown on the plans and called for in the specifications, including any special technical or construction assistance which may be required, except as described in Paragraph D, below, “Materials Furnished by Owner”.

ADDITIONAL ITEMS

A. Construction Specifications:

Construction specifications for this project shall be:
Eagle River Water and Sanitation District – Standard Specifications for Water Mains and Water Service Lines
Additional Project Specifications and Details included in the contract documents
Holy Cross Energy Construction Specifications – for electrical/controls construction
Wherever specifications from multiple jurisdictions may apply, the most restrictive shall govern.

B. Warranty:

The contractor shall warranty all work for a period of two (2) years, see Section 13 of the General Conditions.
C. Insurance Requirements:

Contractor shall be required to have insurance coverage as described in Section 5.02 of the General Conditions.

D. Materials Furnished by Owner

Ductile pipe, HDPE Pipe, hydrants and guard valves, and saddles, corporation stops, and curb stops for Water Service Stub Outs will be purchased directly by the Metropolitan District. Mega-lugs bends and all other necessary appurtenances will be provided by the Successful Bidder.

E. Traffic Control:

The Contractor will be required to submit a traffic control plan approved by BRMD for road work in Bellyache Ridge Metro District. Note that it will be required to maintain at least one lane open at all times.

The Contractor shall be responsible for providing all labor, material and equipment necessary for traffic control and construction warning signs.

F. Existing Utilities:

Contractor shall be responsible for obtaining locations for all underground utilities in the construction areas. The BRMD will provide the available existing system maps and a walkthrough of the in place system. The Contractor shall make such investigations as he deems necessary to verify the actual field conditions. The Contractor shall take sole responsibility for damage to any utility line encountered whether or not located on the drawings, as well as paying for the cost of fines and/or revenue lost by a utility company resulting from outages. The Contractor shall notify the utility companies for field locations before the start of construction. No change in the Contract Price will be allowed for deflecting utilities up or down to clear a proposed improvement. Similarly, no change in the Contract Price will be allowed for supporting utilities along the trench wall when utilities may remain in essentially their current location. Alignment and depth of the new pipelines may be varied to minimize conflicts with existing utilities with the approval of the Engineer and District representative.

The protection of all existing utilities is the responsibility of the contractor. The cost incurred to repair damaged utilities shall be the responsibility of the contractor.

G. Notices and Signage:

The Contractor shall be responsible for providing all affected property owners with notices for the following construction activities:
The Contractor shall attempt to inform each property owner verbally and in writing. If the property owner is not available, the written notice shall be placed at the front entrance with tape.

The Contractor shall be responsible for providing all labor, material and equipment necessary for the posting of "No Parking" and construction warning signs.

In addition, the Contractor shall be responsible for coordination of all proposed street closures with the appropriate emergency response agencies, such as the Police Department, Ambulance Service, Fire Department and other such agencies.

H. Street Signs and Light Fixtures:

All street and traffic signs disturbed by the construction activity shall be reset (or replaced if damaged) in their original location, or in a location directed by the Owner.

I. Construction Staking:

Owner will provide construction stakes establishing lines, slopes, and benchmarks as deemed necessary by the Engineer. These stakes and marks shall constitute the field control by and in accordance with which the Contractor shall establish other necessary controls and perform the work.

The owner will provide staking for each phase of the project defined as follows:

   a. Centerline stakes at appropriate intervals shall be provided for pipelines, if necessary.
   b. Center of proposed water storage tank with elevation of floor.

All of the above staking will be done one time only. Contractor shall notify the Engineer at least two business days in advance to schedule any staking services. Any additional staking or re-staking requested by the Contractor will be charged to the Contractor on a time and materials basis.

The Contractor shall be responsible for the preservation of all stakes and marks until the items of construction, which they govern, have been checked by the Owner or his representative, and removal of the stakes is approved. If any of the construction stakes or marks are carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them may be charged against him and deducted from the payment for the work.
J. Compaction Testing:

The Contractor shall be responsible for providing compaction tests and results from an independent, reputable testing company for all compacted subgrade, fill and aggregate road base material. The minimum required number of satisfactory tests are defined below for each type of construction. All costs for retesting of failed areas shall be the contractor's responsibility.

<table>
<thead>
<tr>
<th>Material</th>
<th>Tests per area or length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subgrade</td>
<td>One test per 10,000 square feet</td>
</tr>
<tr>
<td>Street Subgrade and Base Course</td>
<td>One test per 100 lineal feet of lane</td>
</tr>
<tr>
<td>Structural Fill Material</td>
<td>One test per 10,000 square feet for each two vertical feet of fill</td>
</tr>
</tbody>
</table>

K. Waterline Construction:

1. Water piping constructed with this project shall have a minimum depth of cover of 7 feet, with a maximum depth of 9.5 feet.

2. The construction, disinfection and use of the new water mains shall be phased to minimize the amount of time that individual homeowner will be without water. A maximum outage of 8 hours may be permitted with a 48 hour advance notice to engineer and the Metro District. The Owner, Engineer and Contractor shall agree upon the means and methods for minimizing the interruption of water service, prior to the beginning of construction. The interconnection at the entry to the new pump houses and water tank will be subject to the same conditions.

3. See Eagle Valley Water and Sanitation District Specifications for Construction of Waterlines for additional information on valve and fitting requirements as well as other related requirements. Contractor shall be responsible for filling and testing of new structures and pipelines, not the Metro District, however, it is anticipated that the Contractor will be allowed to utilize BRMD Wells #1, #2 and #3. All roads disturbed by the successful contractor shall be compacted and regraded to their original condition.

L. Soils Report:

The soils report for the 250,000 gallon concrete storage tank is available on request, or on the project FTP site. Bidders are encouraged to familiarize themselves with this report.

The Contractor shall assume all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, including the difficulty of making and maintaining the required excavation, problems caused by ground water should such be
encountered, problems encountered in excavating for lines and structures, and any other difficulties which may result from the geological and physical conditions encountered at the site of the work.

**M. Acquisition of Land, Rights-of-Ways, and Easements:**

All land, right-of-way, and easements required for actual construction under this contract have been acquired by the Metro District.

Should the CONTRACTOR require use of any right-of-way across any other lands, he shall obtain written approval of the respective owners and he shall take sole responsibility for all restoration of such lands to the satisfaction of the respective owners.

**N. Stormwater and Sediment Erosion Control**

The area disturbed shall be limited to the minimum necessary for construction. A Stormwater Management Plan shall be submitted, approved to the Colorado Department of Public Health and the Environment. All BMPs outlined in the Stormwater Management Plan shall be maintained and inspected every 14 days or after each significant storm event.

**O. SDR 21 Drain Lines**

The SDR 21 drain pipelines from the Storage Tank to the outlet shall be as follows: 6 inch nominal size, IPS, O.D. = 6.625 inch, Pressure rating of 200 psi. All PVC SDR Series pipe shall be manufactured from a Type I, Grade I Polyvinyl Chloride (PVC) compound with a Cell Classification of 12454 per ASTM D1784. The pipe shall be manufactured in strict compliance to ASTM D2241, consistently meeting and/or exceeding the Quality Assurance test requirements of this standard with regard to pressure rating, material, workmanship, burst pressure, flattening, impact resistance, and extrusion quality. The pipe shall be manufactured in the USA, using domestic materials, by an ISO 9001 certified manufacturer.

**P. Shop Drawings**

General: The Contractor shall submit shop drawings to the Engineer for review. Shop drawings shall be submitted in accordance with the General Conditions Section 6.13:

**Required Shop Drawing Submittals:**

Aggregate Base Gradations

Concrete Mix Designs

Proctor density curves for each soil type and aggregate base course material to be imported from off-site, and on-site material used for select bedding.
Material submittals for all types of pipe, valves, fittings and appurtenances.

Material submittals for all meters and flumes.

Material submittals for all hardware, gates, siding, vents, and other materials.

Q. Sanitary Facilities

Contractor to provide site rest rooms as required for duration of work

R. Waste disposal

Contractor to provide all waste disposal of all packaging materials and excess debris related to their scope of work. No construction related debris is to be placed in the Bellyache Ridge Metro District Dumpsters. Offenders will be charged $500 per occurrence.

S. Pay Applications

Pay Applications will be processed monthly. Progress Pay Applications shall be in AIA format using AIA form G702 and G703 as per the bid schedule and percentage of work complete per item. Pay applications will be reviewed and approved by the Districts Owners Representative and Engineer for payment.

T. Equipment and Material Staging

Several locations will be identified within the subdivision, on the construction access road and surrounding the tank site for the staging of equipment and materials.

U. Restoration and Revegetation:

Restoration shall consist of restoring the grade to match the pre-construction grade except around structures and where surface drainage is necessary and at other locations as approved by the Metro District. Hydroseed to be seeding method: hydroseeding seed rate: 8-12 PLS / acre seed mix: Dryland Pasture / Old Hay Fields Mix mulch type: certified weed free straw mulch rate: 2,000 lbs / acre tackifier: Plantago based tackifier at 150 lbs / acre via hydroseeding

V. Construction Schedule and Completion Date

Before commencing construction, Contractor shall submit to the Owner for review a schedule of the proposed construction. The schedule shall be updated each week to reflect the current progress of the work. The Owner may require the Contractor to add to his equipment or construction crews if the work falls behind schedule at any time during the construction period.
All work will be required to be completed within the number of days specified on the Bid Schedule after issuance of the Notice to Proceed. Construction is anticipated to begin in early August of 2011, weather permitting.

Construction activity will be allowed as follows:

- Monday through Friday: 7:00 a.m. - 7:00 p.m.
- Saturday, Sunday, Holidays: 8:00 a.m. - 6:00 p.m.

**W. Liquidated Damages**

Should the Contractor fail to complete the work, or any part thereof, in the time stipulated in the Agreement or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract Documents, the Contractor shall reimburse the Owner for the additional expense and damage for each calendar day, Sundays and holidays excluded, that the Contract remains uncompleted after the Contract completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate stipulated on the Bid form. The said amounts are hereby agreed upon as liquidated damages for the loss to the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the Contractor; and the Owner is authorized to deduct the amount of such damages from any monies due the Contractor for work performed or material furnished under this Agreement; and the Contractor and his Sureties shall be liable for any excess.

**X. Classification of Excavation**

All excavation for construction shall be unclassified. The cost of trench excavation shall be included in the unit price of the pipeline installation, or other related construction.

The Contractor shall assume all responsibility for deductions and conclusions which may be made as to the nature of the materials to be excavated, including the difficulty of making and maintaining the required excavation, problems caused by ground water should such be encountered, problems encountered in excavating for lines and structures, and any other difficulties which may result from the geological and physical conditions encountered at the site of the work.

**Y. Maintenance of Traffic**

Provisions shall be made for continuation of traffic through the construction area whenever reasonably possible. Access to individual driveways shall be restricted only when absolutely necessary. All streets must be opened to traffic when construction activities are not occurring. Access must be provided to emergency vehicles at all times.
Z. Potable Waterline Construction:

1. Water piping constructed with this project shall have a minimum depth of cover of 7 feet, with a maximum depth of 9.5 feet.

2. The construction, disinfection and use of the new water mains shall be tested to minimize the amount of time that individual homeowner will be without water. A maximum outage of 8 hours may be permitted with a 96 hour advance notice to engineer and the Metro District. The Owner, Engineer and Contractor shall agree upon the means and methods for minimizing the interruption of water service, prior to the beginning of construction.

3. Contractor shall be responsible for filling and testing of new structures and pipelines, not the Metro District or Engineer, however, it is anticipated that the Contractor will be allowed to utilize BRMD Wells #1, #2 and #3.

AA. Aggregate Base Course:

Aggregate base course for roadway surfacing or pipe bedding material, where required, shall be per CDOT specifications for Class 6 Aggregate Base Course.

BB. BLM Special Stipulations:

1. The contractor/engineer shall inform the Realty Specialist at least ten days prior to the commencement of construction under this grant. Contact the Colorado River Valley Field Office, Realty Specialist.

2. All activities shall be confined to the COC35212 right-of-way corridor.

3. The contractor shall promptly remove and dispose in an authorized sanitary landfill, all waste generated by its activities. Waste includes, but is not limited to, human waste, trash, garbage, petroleum products, ashes and equipment. No burning of trash, brush, or any other material shall be allowed.

4. It is the contractor’s responsibility to coordinate with all other rights-of-way holders and adjacent landowners to make sure any conflicts are resolved with both road and site improvement and future use and maintenance.

5. Minimize fugitive dust production by utilizing a BLM approved dust suppressant (e.g. water) on disturbed areas and over access roads comprised of native surfaces during construction operations.
6. The contractor is to ensure equipment involved in land disturbing actions be clean of noxious weed seeds or propagative parts prior to entry on site. When working in areas with noxious weeds, equipment should be cleaned prior to moving off site.

7. Fuels and lubricants would be stored in appropriate containers and refueling would occur in designated areas.

8. The contractor should utilize stormwater best management practices such as proper placement and installation of silt fencing, straw waddles, revegetation, surface roughening, etc ... to effectively mitigate potential downstream water quality impacts. Discharge of fresh water onto public lands from storage tanks should not be permitted without a BLM approved erosion prevention plan.

9. Reshape all temporary work areas to preconstruction contours. Revegetate temporary work areas with recommended seed mixture.

10. The construction of the proposed tank (60 feet in diameter and 15 feet tall) would remove approximately 0.25 acres of vegetation and temporarily remove an additional 0.25 acres of vegetation. The temporarily disturbed areas would be seeded with a mix of native grasses and noxious weeds would be controlled within the project area by the project proponent as outlined in the Terms and Conditions of the right-of-way grant.

11. All disturbed surfaces shall be revegetated with the species found in the adjacent landscape. Woody debris and stone material generated during construction shall be saved and placed on the disturbed ground surfaced to provide color and texture and to also create microclimates, encouraging vegetation growth.

12. Preserve the existing coniferous and deciduous forest to screen the tank.

13. Spoils from the access road or tank shall not be side cast.

14. The National Historic Preservation Act (NHPA) requires that if newly discovered cultural resources are identified during project implementation, work in that area must stop and the agency Authorized Officer notified immediately (36 CFR 800.13). The Native American Graves Protection and Repatriation Act (NAGPRA), requires that if inadvertent discovery of Native American Remains or Objects occurs, activity must cease in the area of discovery, a reasonable effort made to protect the item(s) discovered, and immediate notice made to the BLM Authorized Officer, as well as the appropriate Native American group(s) (IV.C.2). Notice may be followed by a 30-day delay (NAGPRA Section 3(d)). Further actions also require compliance under the provisions of NHPA and the Archaeological Resource Protection Act.
CC. Concrete Admixture:

INTEGRAL WATERPROOFING OF CONCRETE

1. ADMIXTURE shall be Xypex C-500, C-1000 or C-2000, as supplied by Xypex Chemical Corporation, through IMX Technologies or approved equal. This Admixture shall be a dry powder compound consisting of Portland cement, very fine treated silica sand and various active proprietary chemicals. Xypex causes a catalytic reaction that generates a non-soluble crystalline formation of dendritic fibers within the matrix of the concrete, permanently sealing the concrete from the penetration of liquids and chemicals. Product shall meet the following criteria:

   A. Chemically Resistant for pH Levels of 3 to 11 constant contact and pH Levels of 2 to 12 periodic contact per ASTM C267-77, ASTM C672-76.

   B. Potable Water Approved per National Safety Foundation (ANSI/NSF) 61.

   C. Freeze-Thaw and De-icing Chemical Resistance per ASTM C672-76.


   E. Crack Sealing ability for re-sealing cracks up to .04 mm (1/64") per ASTM C856-88.

   F. Withstand 175 PSI water pressure penetration test per U.S. Army Corps of Engineers CRD-C-48-73.

   G. Concrete Admixture shall not decrease the compressive strength of the concrete mix design (28 day compressive strength test), ASTM C 39/C 39M.

   H. Crystalline Waterproofing Manufacturer shall have a minimum 10 years history manufacturing crystalline waterproofing products.

   I. Concrete Batch Plant Operators shall be Certified by Manufacturer in the mixing and use of Crystalline Waterproofing Products.

   J. Shall provide a ten year watertight warranty per Manufacturer or Manufacturers Representative.*

2. ALTERNATE to Xypex Admixture; Contractor may submit an alternate product or method of construction to Architect/Engineer, for review and approval. Product and/or methods shall be evaluated as per the above specifications.

DD. Eagle County Permits:

1. A Building Permit from the Eagle County Building Department is required prior to any work on the site for the construction of the proposed water tank.

2. A Permit to Construct in the Public Way from the Eagle County Engineering Department is required prior to any work in the Bellyache Ridge Road Right-of-Way.