

PROJECT MANUAL

FOR

# **DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS**

CDOT PROJECT# 21150 (STE-M026-003)

TOWN OF PALMER  
LAKE



PREPARED BY: MATRIX DESIGN  
GROUP, INC.

October 19, 2018

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

**CONTRACT DOCUMENTS**

**TABLE OF CONTENTS**

**BIDDING DOCUMENTS**

Advertisement for Bids	BD-1
Information for Bidders	BD-3
Bid Form	BD-6
Bid Schedule	BD-8
List of Suppliers, Subcontractors	BD-10
Statement of Qualifications, Bidder	BD-11
Requirements Relative to Workers Compensation	BD-12
Bid Bond	BD-17

**BIDDING AND CONTRACT FORMS (CDOT)**

Contractors Performance Capability Statement	Form #605
Anti-Collusion Affidavit	Form #606
Assignment of Antitrust Claims	Form #1416
Federal-Aid Construction Contracts Provisions	FHWA 1273

**CONTRACT FORMS.**

Agreement	CF-1
Payment Bond	CF-5
Performance Bond	CF-7
Notice of Award	CF-9
Notice to Proceed	CF-10
Change Order	CF-11
Certificate of Substantial Completion	CF-12
Punch List	CF-13
Final Receipt	CF-14

**CONDITIONS OF CONTRACT**

General Conditions	GC 1-49
Supplementary Conditions	SC 1-4

**SPECIAL PROVISIONS**

P-1-8

TECHNICAL SPECIFICATIONS - See Colorado Department of Transportation, Standard Specifications for Road and Bridge Construction (Latest Edition) and Section 240 Protection of Migratory Birds, Biological Work Performed by the Contractor's Biologist.

APPENDIX

Drawings

Title Sheet	TS01
General Notes	GN01
Typical Sections	TY01
Summary of Approximate Quantities	SQ01
Roadway Geometric Plan	GP01
Demolition & Removal Plan	RM01 - RM04
Roadway Plan & Profile	RD01 – RD06
Sign & Striping Plan	SN01
Culvert Plan & Profile	SD01 – SD06
Storm Water Details	SD07 – SD08
Storm Water Management Plan-General Notes	SWMP01 – SWMP02
Storm Water Management Plan-Grading & erosion Control Plan	SWMP03 – SWMP06

**TOWN OF PALMER LAKE, COLORADO**

**ADVERTISEMENT FOR BIDS FOR**

**DOUGLAS AVENUE ROADWAY & DRAINAGE  
IMPROVEMENTS**

**CDOT PROJECT# 21150 (STE M026-003)**

The Town of Palmer Lake will receive separate sealed Bids on a General Contract for roadway paving and construction of new concrete lined ditches along Sun Crest Road, Douglas Avenue and Forest View Road. Construction will also include new paving along limited portions of Trinidad Lane and Hilltop Lane and a stormwater pipe crossing and outlet structure at the southerly extents of the project, under Forest View Road. The construction will also entail the reconstruction of existing driveways and installation of new storm pipe crossings. The project will require the installation of approximately 2,627 LF of paved roadway with base course, rap/aggregate shoulders, concrete ditches, miscellaneous grading, and other work incidental for completion.

Bids shall be lump sum, based on unit prices; segregated bids will not be accepted. Sealed bids must include:

CDOT Form 605, Contractors Performance Capability Statement  
CDOT Form 606, Anti-Collusion Affidavit  
CDOT Form: 621, Assignment of Anti-Trust Claims

Forms are available at: <https://www.codot.gov/library/forms>

"The CDOT Form 347, Certification of EEO Compliance, is no longer required to be submitted in the bid package. This form certified that the contractor/proposed subcontractors were in compliance with the Joint Reporting Committee EEO-1 form requirements. The EEO-1 Report must still be submitted to the Joint Reporting Committee if the contractors and subcontractors meet the eligibility requirements (29CFR 1602.7); we will, however, no longer require certification. For additional information regarding these federal requirements, please refer to:

<http://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>

Bids will be received by the Town of Palmer Lake, at the office of the Finance Director, P.O. Box 208, 42 Valley Crescent, Palmer Lake, Colorado 80133, until **11:00 AM, Thursday, February 21, 2019** at which time the bids will be publicly opened and read aloud.

Bid security in the amount of five percent of the Bid must accompany each Bid in accordance with the Instructions to Bidders.

Bids cannot be opened without concurrence by CDOT. If concurrence is not received by CDOT prior to the bid opening, all bids will be returned unopened and the project re-bid at a later date.

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

A **mandatory** Pre-Bid conference will be held at the Town Hall, 42 Valley Crescent, Palmer Lake, Colorado 80133 on Thursday, February 14, 2019 at 11:00 AM. The Contract Documents may be reviewed or obtained at <http://www.townofpalmerlake.com>. Questions should be directed to Jason Dosch at the Town of Palmer Lake Roads Dept. [jasond@palmer-lake.org](mailto:jasond@palmer-lake.org)

First Publication: January 31, 2019

Second Publication: February 6, 2019

Third Publication: February 13, 2019

**Bidnet.com**

**Daily Journal**

Project Manual & Drawings on file for review:

*Valerie Remington*

Finance Director

Town of Palmer Lake

42 Valley Crescent

**Palmer Lake, CO 80133**

(719) 481-2953

[www.townofpalmerlake.com](http://www.townofpalmerlake.com)

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

Bid Documents

**BD-2**

## INFORMATION FOR BIDDERS

Bids will be received by the Town of Palmer Lake (herein called the "Owner"), at the office of the Finance Director, P.O. Box 208, 42 Valley Crescent, Palmer Lake, Colorado 80133, until 11:00 AM, Thursday, February 21, 2019, and then at said office publicly opened and read aloud.

Each Bid must be submitted in a sealed envelope, addressed to the Town of Palmer Lake at P.O. Box 208, 42 Valley Crescent, Palmer Lake, Colorado 80133. Each sealed envelope containing a Bid must be plainly marked on the outside as Bid for Douglas Avenue Roadway & Drainage Improvements CDOT Project # 21150 (STE M026-033) and the envelope should bear on the outside the name of the Bidder, his address and his license number if applicable. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to the Finance Director, P.O. Box 208, 42 Valley Crescent, Palmer Lake, Colorado 80133.

All Bids must be made on the required Bid Form. All blank spaces for Bid prices must be filled in ink or typewritten, and the Bid Form must be fully completed and executed when submitted. Only one copy of the Bid Form is required.

The Owner may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above-scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within 30 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the Bidder.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid schedule by examination of the site and a review of the Drawings and Specifications including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or of the nature of the Work to be done.

The Owner and Engineer and/or Contractor shall provide to Bidders prior to Bidding, all information which is pertinent to, and delineates and describes, the land owned and rights of way acquired or to be acquired.

The Contract Documents contain the provisions required for the construction of the Project. Information obtained from an officer, agent or employee of the Owner and Engineer and/or Contractor or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the contract.

Each bid must be accompanied by a Bid Bond payable to the Owner for five percent of the total amount of the Bid. As soon as the Bid prices have been compared, the Owner will return the Bonds of all except the three lowest responsible Bidders. When the Agreement is executed, the Bond of the two remaining unsuccessful Bidders will be returned. The Bid Bond of the successful Bidder will be retained until the Payment Bond and Performance Bond have been executed and approved, after which it will be returned. A certified check may be used in lieu of a Bid Bond.

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

A Performance Bond and a Payment Bond, each in the amount of 100 percent of the Contract Price, with a corporate surety approved by the Owner will be required for the faithful performance of the contract.

Attorneys-in-fact who sign Bid Bonds or Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and satisfy the Performance Bond and Payment Bond requirements within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement and Bond Forms. In case of failure of the Bidder to execute the Agreement, the Owner may at its option consider the Bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner within ten (10) days of receipt of acceptable Performance Bond, Payment Bond and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may by Written Notice withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

The Notice to Proceed shall be issued within ten (10) days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the ten (10) day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein.

A conditional or qualified Bid may be cause for rejection.

Award will be made to the lowest responsible Bidder. There is no local bidders' preference on this project.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract and bid process throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from obligation in respect to his Bid.

Each prospective Bidder must make his own interpretation of information made available by Engineer and may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine conditions which will affect performance of the work. Provisions regarding Change Orders for unforeseen physical conditions are included in General Conditions,

**A mandatory pre-bid conference will be held at the Town Hall Building, 42 Valley Crescent, Palmer Lake, Colorado 80133, on Thursday, February 14, 2019 at 11:00 a.m. local time. Representatives of the town will be available to present a project overview and answer questions concerning the project. Any changes to the Contract Documents arising from this conference will be issued by Addendum to all plan holders following the meeting.**

The Bid Bond shall be submitted with and included as a part of the Bid on the form provided and described herein.

**CDOT Forms #605, #606 and #621 shall be executed and submitted with Bid (Note: The DBE goal for this project is 0%).**

**The party to whom the contract is awarded will be required to execute and submit CDOT Form #621 with the Agreement and shall satisfy all "Required Contract Provisions" as included in the Contract Documents.**

**Bidders need to be aware that award of this Bid is subject to the Town's ability to satisfy all requirements of the Colorado Department of Transportation (CDOT), the funding agency. This funding is fully expected to be received by the Town. Owner reserves the right to reject all bids if funding is not secured. Owner shall not be responsible for, or held liable for, any costs associated with any and all bids received and rejected.**

**Bidders shall include all costs associated with each individual line item quantity, including, profit, etc.**

**Bidders shall be aware that the Town will be doing additional materials testing outside of the Town's normal testing as required by CDOT.**



**BID FORM**  
**DOUGLAS AVENUE ROADWAY & DRAINAGE**  
**IMPROVEMENTS**

**CDOT PROJECT# 21150 (STE M026-003)**

Proposal of \_\_\_\_\_

(hereinafter called "Bidder"), organized and existing under the

laws of the State of \_\_\_\_\_ doing business

as \_\_\_\_\_ \*\* To the Town of

Palmer Lake (hereinafter called "Owner").

THE UNDERSIGNED BIDDER, having familiarized himself with the conditions affecting the performance of the Work and with the Contract Documents, hereby proposes, in accordance with said Contract Documents, to furnish all plant, equipment, labor, materials, and supervision to perform the Work summarized hereafter on the Bid Schedules upon which a proposal amount is inserted.

The total Bid for each item includes all Work necessary to complete that portion of the project described, and the total of each item represents the entire scope of Work covered by the Contract Documents. If a particular item of Work is not specifically separated as a bid item, the cost therefor shall be included in the bid item most nearly related.

The total Bid for each item is based on the quantities shown on the Bid Schedule. When items are based upon unit prices, the Contract Amount will be adjusted at the corresponding unit prices according to the actual quantities and measurement of the finished construction as determined by the Engineer upon completion of construction.

All Bidders shall submit a Bid on all Bid items.

Bidder hereby agrees to commence Work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the Project within **70 working days** thereafter.

Bidder further agrees to pay as liquidated damages, the sum of \$1,600.00 for each consecutive calendar day thereafter that the Work remains incomplete, as provided in the Supplementary Conditions.

\*\* (Insert "a corporation", "a partnership", "an individual", as applicable.)

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

Bidder acknowledges and agrees that in addition to other conditions and limitations set forth in the Information to Bidders and the Contract Documents, the Owner may consider irregular any Bid on which there is an alteration of, departure from, or omission from the required Bid Documents, and at its sole option, may reject same. Bidder further acknowledges and agrees that rejection of any or all Bids by the Owner, or waiver of any irregularity, shall not result in any enforceable right of the Bidder against the Owner, and Bidder waives all rights, if any, it would otherwise have to any claim or cause of action against Owner arising from the Owner's waiver of any Bid irregularity or from Owner's rejection or non-award of any Bid.

The Bidder certifies 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 that his Bid has been arrived at independently, without consultation, communication or agreement as to any matter relating to this Bid with any other Bidder or competitor.

The Bidder acknowledges receipt of the following Addenda: \_\_\_\_\_

Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Business Address:

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DOUGLAS AVENUE ROADWAY & DRAINAGE  
IMPROVEMENTS**

**CDOT PROJECT# 21150 (STE M026-003)**

BIDDER agrees to provide all equipment, materials, labor, supplies, and all services and incidental items necessary for the construction of the curb, gutter, sidewalk, cross pan and other miscellaneous items as described in the CONTRACT DOCUMENTS for the following lump sum and unit bid prices:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>EXTENDED</u>
201-00000	CLEARING & GRUBBING	LS	1	\$ _____	\$ _____
202-00026	REMOVE CONCRETE DITCH PAVEMENT	SY	160	\$ _____	\$ _____
202-00035	REMOVE PIPE	LF	310	\$ _____	\$ _____
202-00047	REMOVE ELECTRICAL EQUIPMENT	LS	2	\$ _____	\$ _____
202-00210	REMOVE CONCRETE PAVEMENT	SY	3	\$ _____	\$ _____
202-00220	REMOVE ASPHALT MAT	SY	44	\$ _____	\$ _____
203-00010	UNCLASSIFIED EXCAVATION	CY	879	\$ _____	\$ _____
206-00200	STRUCTURAL BACKFILL (CLASS 2)	CY	43	\$ _____	\$ _____
206-01000	BED COURSE MATERIAL	CY	38	\$ _____	\$ _____
208-00001	SILT DIKE	LF	55	\$ _____	\$ _____
208-00008	EROSION LOG TYPE 1 (9 INCH)	LF	55	\$ _____	\$ _____
208-00011	EROSION BALES (WEED FREE)	EA	10	\$ _____	\$ _____
208-00020	SILT FENCE	LF	1,610	\$ _____	\$ _____
208-00033	SEDIMENT TRAP	EA	2	\$ _____	\$ _____
208-00041	ROCK CHECK DAM	EA	50	\$ _____	\$ _____
208-00045	CONCRETE WASHOUT STRUCTURE	EA	1	\$ _____	\$ _____
208-00051	STORM DRAIN INLET PROTECTION (TYPE 1)	EA	20	\$ _____	\$ _____
208-00070	VEHICLE TRACKING PAD	EA	1	\$ _____	\$ _____
208-00103	REMOVAL AND DISPOSAL OF SEDIMENT (LABOR)	HR	120	\$ _____	\$ _____
208-00207	EROSION CONTROL MANAGEMENT	DAY	20	\$ _____	\$ _____
210-00011	RESET MAILBOX STRUCTURE (TYPE1)	EA	20	\$ _____	\$ _____
210-01000	RESET FENCE	LF	120	\$ _____	\$ _____
210-02900	RELAY RIPRAP	CY	8	\$ _____	\$ _____
210-04010	ADJUST MANHOLE (SAN SEWER)	EA	6	\$ _____	\$ _____
210-04050	ADJUST VALVE BOX (WATER)	EA	5	\$ _____	\$ _____
212-00006	SEEDING NATIVE	AC	0.27	\$ _____	\$ _____
213-00002	MULCHING (WEED FREE HAY)	AC	0.27	\$ _____	\$ _____
216-00201	SOIL RETENTION BLANKET (CLASS 1)	SY	232	\$ _____	\$ _____
304-06007	AGGREGATE BASE COURSE (CLASS 6) (6 INCH)	CY	1,009	\$ _____	\$ _____
304-09100	AGGREGATE BASE COURSE (RECYCLED ASPHALT PAVEMENT	TN	501	\$ _____	\$ _____
403-33742	HOT MIX ASPHALT PAVEMENT (GRADING S) (75) (pg 64-22) (2 INCH)	SY	7,482	\$ _____	\$ _____
403-34742	HOT MIX ASPHALT PAVEMENT (GRADING SX) (75) (pg 64-22) (2 INCH)	SY	6,020	\$ _____	\$ _____
506-00212	RIPRAP (12 INCH)	CY	89	\$ _____	\$ _____
507-00100	CONCRETE SLOPE AND DITCH PAVING (REINF) (4 INCH)	CY	214	\$ _____	\$ _____
601-01050	CONCRETE CLASS B (HEADWALL)	CY	4	\$ _____	\$ _____

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

602-00000	REINFORCING STEEL (HEADWALL)	LB	166	\$ _____	\$ _____
603-01185	18 INCH RCP (CIP)	LF	100	\$ _____	\$ _____
603-01245	24 INCH RCP (CIP)	LF	118	\$ _____	\$ _____
603-05024	24 INCH RCES	EA	1	\$ _____	\$ _____
603-50018	18 INCH HDPE (CIP)	LF	412	\$ _____	\$ _____
620-00020	SANITARY FACILITY	EA	1	\$ _____	\$ _____
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ _____	\$ _____
626-00000	MOBILIZATION	LS	1	\$ _____	\$ _____
627-00005	EPOXY PAVEMENT MARKING	GAL	40	\$ _____	\$ _____
627-30410	PREFORMED THERMOPLASTIC PAVEMENT MARKING (STOP LINE)	SF	32	\$ _____	\$ _____
630-80000	TRAFFIC CONTROL	LS	1	\$ _____	\$ _____
700-70380	EROSION CONTROL	FA	1	\$ _____	\$ _____
700-70010	F/A MINOR CONTRACT REVISIONS	FA	1	\$ _____	\$ _____

BID SCHEDULE TOTAL \$ \_\_\_\_\_

WRITTEN GRAND TOTAL OF BID SCHEDULE \_\_\_\_\_

Respectfully Submitted:

\_\_\_\_\_  
Signature Title

( Seal - if Bid is by a Corporation)  
Attest:

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

LIST OF SUPPLIERS, SUBCONTRACTORS, AND  
KEY WORK BY CONTRACTOR  
**DOUGLAS AVENUE ROADWAY & DRAINAGE  
IMPROVEMENTS**  
**CDOT PROJECT# 21150 (STE M026-003)**

Name of Bidder: \_\_\_\_\_

Provide name, address, and phone number of Subcontractor if Subcontractor is to do any of the following work. If Bidder is to do the work, enter "Bidder".

1. Excavation & Base Course Work

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

2. Asphalt and Concrete Installation

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Which company will be providing Concrete?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Which company will be providing Asphalt?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Which company will be providing Base Course?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature of Bidder \_\_\_\_\_

Address of Bidder \_\_\_\_\_

Printed Name of Bidder \_\_\_\_\_

**Bidder's Telephone Number** \_\_\_\_\_

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

**STATEMENT OF QUALIFICATIONS, BIDDER**

**DOUGLAS AVENUE ROADWAY & DRAINAGE  
IMPROVEMENTS**

**CDOT PROJECT# 21150 (STE M026-003)**

Bidder shall respond to the following for evaluation as a responsible Contractor. The Town of Palmer Lake will consider capability, experience, and financial standing for award of this Bid.

1. Name of Bidder: \_\_\_\_\_
2. How many years in business? \_\_\_\_\_
3. Please give a brief description of your previous experience in asphalt placement work, reinforced concrete placement, concrete flat work and culvert placement with Contracts similar (or larger) in magnitude to this Contract:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Please give at least two references who can speak of your previous asphalt placement work, reinforced concrete placement, concrete flat work and culvert placement or other related work performance:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Please give references who can speak to your financial condition (Financial Officer, Banker, or CPA):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. The following person(s) have prepared this information, and each by his signature testify that this information is truthful and without exaggeration or distortion.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

**TOWN OF PALMER LAKE REQUIREMENTS  
RELATIVE TO WORKERS COMPENSATION INSURANCE COVERAGE  
FOR CONTRACTORS AND THEIR EMPLOYEES**

The Town of Palmer Lake generally requires that all persons performing any work for the Town pursuant to contract with the Town be covered by Workers Compensation Insurance. Such requirement applies to all sole proprietors, partnerships and corporations (hereinafter called "employers") contracting with the Town. Such coverage must be provided and maintained with respect to each and every natural person performing work pursuant to the contract with the Town at all times while any of the work described in or contemplated under the contract is being performed. Certificates evidencing Workers Compensation Insurance coverage for all persons who will perform any part of the work must be provided to the Town prior to the commencement of any work.

Notwithstanding the foregoing, and in recognition of the terms of Section 8-41-401(3), C.R.S., as amended, the Town will consider waiving such requirement as to any employer who meets the guidelines specified herein below and qualifies as an independent contractor (as that term is defined at Section 8- 41-401(3)). Any employer who wishes to be considered as exempt must complete all parts of this form and furnish such information and documentation as is required hereunder.

**PART A**

**Employer Information:**

Name: \_\_\_\_\_ Social Security#: \_\_\_\_\_

Company Name: \_\_\_\_\_ FEIN \_\_\_\_\_

**Primary Business Location or Mailing:**

Address: \_\_\_\_\_

\_\_\_\_\_

Describing the type of business or work performed

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Designate the form of business (indicate one):

Sole Proprietor

Partnership

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

Corporation

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)



EMPLOYERS WHO WILL PROVIDE WORKERS COMPENSATION COVERAGE MUST SIGN THE CERTIFICATION PROVIDED FOR AT THE END OF THIS FORM. SUCH EMPLOYERS MAY IGNORE THE BALANCE OF THIS PART A AND ALL OF PART BAND PROCEED TO THE CERTIFICATION SECTION OF THIS FORM.

If the "Partnership" box is checked:

Give the name, address and telephone number of each partner:

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Furnish a copy of the partnership agreement or, if there is none, state that there is none and explain why there is none and state when and under what circumstances the partnership was formed:

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Furnish copies of Schedules A and L (form 1065) of the Partnership Tax Return filed with the Internal Revenue Service for the most recent calendar year (or fiscal year if the partnership uses a fiscal year other than a calendar year) with respect to which a Partnership Tax Return was due. If no Partnership Tax Return was filed, please explain in detail why the return was not filed when due:

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If the "Corporation" box is checked, furnish a certificate of good standing issued by the Colorado Secretary of State dated no earlier than 90 days prior to the date this form is submitted, and furnish a copy of the most recent "corporate report" filed by the corporation pursuant to the requirements of Section 7-10-101(1), C.R.S., as amended.

**PART B**

Employer represents that employer qualifies as an independent contractor and, as such, is exempt from any obligation under the Colorado Workers Compensation Act to obtain coverage under a policy of Workers Compensation Insurance because employer meets each and every one of the following guidelines:

1. Employer owns all or 100% of the assets of the business, company or service that will perform work and services for the Town as an independent contractor.
2. Employer manages and controls this business, company or service.
3. Employer has ultimate responsibility for all decisions affecting this business, company or service.

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

4. Employer is subject to realize any profit or loss from this business, company or service as evidenced by annually filing with the Internal Revenue Service individual tax returns, if a sole proprietor; Tax Schedule C, or Form 1120, U.S. Corporation Tax Return, if a corporation; or Schedules A and L (Form 1065) of the Partnership Tax Return, if a partnership.

a) The undersigned employer hereby states and represents that employer meets the guidelines set forth herein above and qualifies as an independent contractor. The undersigned represents, acknowledges and understands that if he or she is injured while performing work or services for the Town of Palmer Lake, he or she will not be covered for such injury under the said Town's insurance policy.

b) The undersigned further understands that employer is still required to provide Workers Compensation Insurance coverage for all employees or contract laborers who are or may be hired by employer to perform work for the benefit of the Town. In addition, employer understands that a premium charge may be levied against employer by the Town in the event the courts determine a different status of employment or the Town determines a falsification of information or records provided by employer in support of employer's representations to the Town.

c) In consideration of the Town's waiver of its requirement that employer provide proof of Workers Compensation Insurance coverage, the undersigned hereby acknowledges that such waiver, if made, shall have been made on the basis of those representatives made by the employer herein and, in the event that the undersigned is injured while performing contractual work or services for the Town, said undersigned waives any and all claims or causes of any kind against the Town on behalf of himself and his dependents, heirs and/or assigns, and agrees to defend, indemnify and hold harmless the Town from and with respect to all such claims or causes arising out of or with respect to such injury.

d) If for any reason the foregoing subparagraph 4(c) of Part B should be declared invalid or unenforceable, the undersigned understands and agrees that the undersigned and the undersigned's dependents shall nevertheless be bound by and have no rights which are greater than those provided for at Section 8-41-401(3), C.R.S., as amended.

Having understood and read the above provisions, the undersigned certifies under penalty or perjury that employer meets all of the requirements in Part B above and thereby is exempt from the Colorado Workers Compensation Act.

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Signature of Independent Contractor/Title/Date

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Signature of Independent Contractor/Title/Date

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

\_\_\_\_\_  
Signature of Independent Contractor/Title/Date

Note: This form must be signed by all partners of any partnership claiming to be qualified as an independent contractor in accordance with the foregoing guidelines and by all principals of any corporation claiming such status. All signatures shall be notarized.

STATE OF COLORADO )

) ss.

COUNTY OF )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

by : \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

by : \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

by : \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

by : \_\_\_\_\_

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

CERTIFICATION BY EMPLOYERS WHO CLAIM NO EXEMPTION UNDER THE  
COLORADO WORKERS COMPENSATION INSURANCE ACT

I hereby CERTIFY that I intend to employ person(s) for hire to provide the services specified in the contract documents with the Town of Palmer Lake. I also agree to provide Workers Compensation Insurance coverage for myself and all of my employees and agree to provide proof of such coverage to the Town of Palmer Lake prior to commencing work on this project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE  
IMPROVEMENTS**

**CDOT PROJECT# 21150 (STE M026-003)**

Employers' Workers Compensation carrier and policy number are:

\_\_\_\_\_  
Carrier

\_\_\_\_\_  
/Policy#

\_\_\_\_\_  
Contractor(s) signatures(s)  
\_\_\_\_\_

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

**BID BOND**

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned \_\_\_\_\_

\_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto as owner in the penal sum of \_\_\_\_\_

\_\_\_\_\_ for the payment of which, well truly to be made, we hereby jointly and severally bind ourselves, successors and assigns. Signed, this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

The Condition of the above obligation is such that whereas the Principal has submitted to

\_\_\_\_\_ a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the \_\_\_\_\_

NOW, THEREFORE,

(a) If said Bid shall be rejected, or

(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with each bid) and shall furnish a Bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

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

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

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Colorado.  
BID NO. 55-17.

Douglas Avenue Roadway &  
Drainage Improvements  
CDOT Project# 21150 (STE M026-033)

**COLORADO DEPARTMENT OF TRANSPORTATION  
CONTRACTORS PERFORMANCE CAPABILITY STATEMENT**

Project#

1. List names of partnerships or joint ventures  none

2. List decreases in the contractors fiscal or workmanship qualifications compared to the last prequalification statement submitted to COOT. (Attach additional sheets if necessary.)

a. Key personnel changes  none

b. Key equipment changes  none

c. Fiscal capability changes (legal actions, etc.)  none

d. Other changes that may effect the contractors ability to perform work.  none

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Contractor's firm or company name

By

Date

Title

2nd Contractor's firm or company name (if joint venture)

By

Date

Title

**COLORADO DEPARTMENT OF TRANSPORTATION  
ANTI-COLLUSION AFFIDAVIT**

PROJECT NO.

LOCATION

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.
- 2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project and will not be so disclosed prior to bid opening.
- 2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.
- 3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
- 3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, non-competitive or other form of complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. I understand, and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name

By

Date

Title

2nd contractor's firm or company name. (If joint venture.)

By

Date

Title

Sworn to before me this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_\_

Notary Public

My commission expires

**NOTE: This document must be signed in ink.**



**COLORADO DEPARTMENT OF TRANSPORTATION  
ASSIGNMENT OF ANTITRUST CLAIMS**

PROJECT NO.

Contractor and Colorado Department of Transportation (COOT) recognize that in actual economic practice antitrust violations ultimately impact on COOT. Therefore, for good cause and as consideration for executing this contract and for receiving payments hereunder:

1. Contractor hereby irrevocably assigns to CDOT any and all claims it may now have or which may hereafter accrue to it under federal or state antitrust laws in connection with the particular project, goods or services purchased or acquired by CDOT pursuant to this contract.
2. Contractor hereby expressly agrees:
  - a. That, upon becoming aware that a third party has commenced a civil action asserting on Contractor's behalf an antitrust claim which has been assigned to CDOT hereunder, Contractor shall immediately advise in writing:
    - (1) Such third party that the antitrust claim has been assigned to CDOT, and
    - (2) CDOT that such civil action is pending and of the date on which, in accordance with subparagraph a. (1) above, Contractor notified such third party that the antitrust claim had been assigned to CDOT;
  - b. To take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
  - c. Promptly to pay over to CDOT its proper share of any payment under an antitrust claim brought on Contractor's behalf by any third party and which claim has been assigned to COOT hereunder.
3. Further, Contractor agrees that in the event it hires one or more subcontractors to perform any of its duties under the contract, Contractor shall require that each such subcontractor:
  - a. Irrevocably assign to CDOT (as a third-party beneficiary) any and all claims that such subcontractor may have, or which may thereafter accrue to the subcontractor under federal or state antitrust laws in connection with any goods or services provided by the subcontractor in carrying out the subcontractor's obligations to Contractor;
  - b. Upon becoming aware that a third party has commenced a civil action on the subcontractor's behalf asserting an antitrust claim which has been assigned to CDOT hereunder, shall immediately advise in writing:
    - (1) Such third party that the antitrust claim has been assigned to CDOT, and
    - (2) Contractor and COOT that such civil action is pending and of the date on which, in accordance with subparagraph b. (1) above, the subcontractor notified such third party that the antitrust claim had been assigned to CDOT;
  - c. Take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
  - d. Promptly pay over to CDOT its proper share of any payment under an antitrust claim brought on the subcontractor's behalf by any third party and which claim has been assigned or dedicated to CDOT pursuant hereto.

I, acting in my capacity as officer of a bidder (bidders if a joint venture) do agree to the above assignment of antitrust claims.

Contractor's firm or company name	By	Date
	Title	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in **all** subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in **all** contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to **all** work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and **all** subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants/ Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

#### 111. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

#### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

##### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made, or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made, or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal . contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(8) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.



## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more - as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification - First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant. Who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A-EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the sub region, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_

by and between Town of Palmer Lake, hereinafter called, "Owner" and

\_\_\_\_\_ hereinafter called "Contractor."  
WITNESSETH: that for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the paving and construction of new concrete lined ditches along Sun Crest Road, Douglas Avenue and Forest View Road. Construction will also include new paving along limited portions of Trinidad Lane and Hilltop Lane and a stormwater pipe crossing and outlet structure at the southerly extents of the project, under Forest View Road. The construction will also entail the reconstruction of existing driveways and installation of new storm pipe crossings. The project will require the installation of approximately 2,627 LF of paved roadway with base course, rap/aggregate shoulders, concrete ditches, miscellaneous grading, and other work incidental for completion.
2. The Contractor will furnish all equipment, materials, supplies, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the work in accordance with Contract Documents within 70 calendar days after the date of the Notice to Proceed and will complete the same within 70 working days, unless the period for completion is extended otherwise by the Contract Documents.
4. The Contractor agrees to perform all of the work as described in the Contract Documents and comply with the terms therein for the total sum of \$ \_\_\_\_ Payments of said sum shall be based on approved monthly pay requests.
5. The term "Contract Documents" means and includes the following:
  - (A) Advertisement for Bids
  - (B) Invitation to Bid
  - (C) Agreement
  - (D) Payment Bond
  - (E) Performance Bond
  - (F) Notice of Award
  - (G) Notice to Proceed
  - (H) Change Order
  - (I) Certificate of Substantial Completion
  - (J) Punch List
  - (K) Final Receipt
  - (L) General Conditions
  - (M) Supplementary Conditions

Douglas Avenue Roadway  
& Drainage Improvements  
CDOT Project# 21150 (STE M026-033)



- (N) Special Provisions
- (O) Technical Specifications
- (P) Design Drawings
- (Q) CDOT Forms
- (R) Appendixes
- (S) Addenda:

No.: \_\_\_\_\_ Dated: \_\_\_\_\_

No.: \_\_\_\_\_ Dated: \_\_\_\_\_

6. The term "Engineer" shall mean Matrix Design Group, Inc., designer of the Project.
7. Each of the foregoing contract documents is incorporated herein, by reference, as though set out in full in this Agreement.
8. This Agreement shall be binding upon parties hereto and their respective heirs, executors, administrators, successors, and assigns.
9. This instrument contains the entire agreement between the parties, and no statement, or promises, or inducements made by any party or agent of any party that is not contained in this written contract shall be valid or binding; and this contract shall not be enlarged, modified or altered except in writing, signed by the parties.
10. General construction warranties and proprietary items referenced in this project manual shall not apply. Refer to Section 1.2 - CDOT SPECIFICATION REQUIREMENTS of the Special Provisions for further details about CDOT specifications on this project.
11. Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and that Contractor has confirmed or will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this contract, through participation either in the E-Verify Program (which is the electronic employment verification program created and expounded by federal law and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or any federally administered successor program) the Department program [which is the program administered by the Colorado Department of Labor and Employment pursuant to and established pursuant to CRS §8-17.5-102(5)(c)]. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.



In addition, Contractor:

- (a) shall not use the E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed;
- (b) shall notify the subcontractor and the Town within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract;
- (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice (except that the Contractor shall not terminate the contract with the subcontractor if, during the three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien); and
- (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the Town a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the Town may terminate this contract for breach of contract and, if so terminated, Contractor shall be liable for actual and consequential damages.

Note: If the addendum is not used, the foregoing language may be inserted into the body of a contract for public services to satisfy the requirements of CRS §8-17.5-101 and 102.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (2 copies) each of which shall be deemed an original on the date first above written.

Owner:

Town of Palmer Lake:

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENT: that

\_\_\_\_\_

\_\_\_\_\_

a \_\_\_\_\_ hereinafter called Principal and

\_\_\_\_\_

\_\_\_\_\_

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_

\_\_\_\_\_

hereinafter called Owner, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_, in lawful money of the United States, for the payment of  
which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally,  
firmly by these present.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain  
contract with the Owner, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ attached and made a  
a copy of which is hereto a part hereof for the construction of:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors,  
and corporations furnishing materials for or performing labor in the prosecution of the work provided for in  
such contract, and any authorized extension or modification thereof, including all amounts due for materials,  
lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used  
in connection with the construction of such work, and all insurance premiums on said work, and for all  
labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void,  
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
(number) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
(Principal Secretary)  
(SEAL)

\_\_\_\_\_  
By \_\_\_\_\_(s)

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_

\_\_\_\_\_  
(Surety)  
By \_\_\_\_\_  
Attorney-in-Fact

ATTEST:  
\_\_\_\_\_  
Witness as to Surety  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

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

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENT: that

\_\_\_\_\_ (Name of Contractor)

\_\_\_\_\_ (Address of Contractor)

a \_\_\_\_\_ hereinafter called  
(Corporation, Partnership or Individual)

Principal and \_\_\_\_\_ (Name of Surety)

\_\_\_\_\_ (Address of Surety)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_ (Name of Owner)

\_\_\_\_\_ (Address of Owner)

hereafter called Owner, in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the two year warranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and pay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time,, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_  
(number)  
counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal) Secretary

By \_\_\_\_\_(s)

(SEAL)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_  
Attorney-in-fact

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

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

**NOTICE OF AWARD**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

The Owner has considered the Bid submitted by you for the above-described work in response to its Advertisement for Bids dated \_\_\_\_\_

\_\_\_\_\_ You are hereby notified that your Bid has been accepted Schedule Option \_\_\_\_\_ for items in the total amount of \$ \_\_\_\_\_

You are hereby required to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificates of insurance within fifteen (15) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within fifteen (15) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by:

\_\_\_\_\_

this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**NOTICE TO PROCEED**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

You are hereby notified to commence work in accordance with the Agreement dated \_\_\_\_\_, on or before \_\_\_\_\_. The date of completion for all work is \_\_\_\_\_.

The Town of Palmer Lake  
Owner

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice to Proceed is hereby acknowledged by

\_\_\_\_\_, this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



**CHANGE ORDER**

Order No: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

Owner: TOWN OF PALMER LAKE

Contractor: \_\_\_\_\_

The following changes are hereby made to the Contract Documents:

Justification:

Original Contract Price \$ \_

Current Contract Price adjusted by previous Change Order \$ \_\_\_\_\_

The Contract Price due to this Change Order will be increased by \$ \_\_\_\_\_

The Contract Price due to this Change Order will be \$ \_\_\_\_\_

Change to Contract Time:

The Contract Time will be (decreased/increased) by \_\_\_\_\_ calendar days.

The date for completion of all work will be \_\_\_\_\_  
(Date)

Approved by Owner: \_\_\_\_\_  
(Date)

Approved by Engineer: \_\_\_\_\_  
(Date)

Approved by Contractor: \_\_\_\_\_  
(Date)

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

Date: \_\_\_\_\_

Agreement

Date: \_\_\_\_\_

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

Owner: TOWN OF PALMER LAKE

Contractor: \_\_\_\_\_

COMPLETED PROJECT WORK OR SPECIFIED PART SHALL INCLUDE:

ENTIRE PROJECT

The work performed under this contract has been inspected by authorized representatives of the Owner, Contractor, and Engineer, and the Project (or specified part of the Project, as indicated above) is hereby declared to be substantially completed on the above date.

**DEFINITION OF SUBSTANTIAL COMPLETION**

The date of substantial completion of a project or specified area of the Project is the date when the construction is sufficiently completed, in accordance with the contract documents, as modified by any change orders agreed to by the parties, so that the Owner can occupy or utilize the project or specified area of the Project for the use for which it was intended.

The Punch List of items to be completed or corrected will be completed upon walkthrough and appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract documents.

Town of Palmer Lake Engineering Department By \_\_\_\_\_

AUTHORIZED REPRESENTATIVE      DATE

Jason Dosch

The Owner accepts the Project or specified area of the Project as substantially complete and will assume full possession (per the Contract terms) of the Project or specified area of the Project at the time and date noted.

Town of Palmer Lake \_\_\_\_\_

By \_\_\_\_\_

OWNER

AUTHORIZED REPRESENTATIVE      DATE

Town Administrator

The Contractor accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the Punch List within the time indicated.

\_\_\_\_\_

By \_\_\_\_\_

CONTRACTOR

AUTHORIZED REPRESENTATIVE      DATE

**PUNCH LIST**

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

Owner: TOWN OF PALMER LAKE

Contractor: \_\_\_\_\_

**FINAL WALK-THROUGH REPRESENTATION**

NAME

REPRESENTING

NAME	REPRESENTING

The following 1 ems are to be corrected or completed to comply with the contract documents:

NO.	ITEM

**FINAL RECEIPT**

Received as full and final payment of the cost of the improvements provided for in the Contract Documents for Project:

Project:

**DOUGLAS AVENUE ROADWAY & DRAINAGE IMPROVEMENTS  
CDOT PROJECT# 21150 (STE M026-033)**

the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), in cash, being the remainder of the full amount accruing to the undersigned by virtue of said Contract; said case also covering and including full payment for the cost of all extra work and all incidentals thereto, and the undersigned hereby releases said OWNER from all claims whatsoever growing out of said Contract.

And these presents are to certify that all persons doing work upon or furnishing materials for said improvements under the foregoing Contract have been paid in full.

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
By

\_\_\_\_\_  
Date

## GENERAL CONDITIONS

These General Conditions are an adaptation of a portion of the 1983 edition of "Standard General Conditions of The Construction Contract" jointly issued by: National Society of Professional Engineers, American Consulting Engineers Council, American Society of Civil Engineers and Construction Specifications Institute.

### TABLE OF CONTENTS OF GENERAL CONDITIONS

#### ARTICLE 1 - DEFINITIONS

#### ARTICLE 2 - PRELIMINARY MATTERS

- Delivery of Bonds
- Copies of Documents
- Commencement of Contract Time
- Starting the Project
- Before Starting Project
- Preconstruction Conference
- Finalizing Schedules

#### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- Intent
- Amending and Supplementing Contract Documents
- Reuse of Documents

#### ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

- Availability of Lands
- Physical Conditions
- Physical Conditions--Underground Facilities

#### ARTICLE 5 - BONDS AND INSURANCE

- Performance and Other Bonds
- Contractor's Liability Insurance
- Contractual Liability Insurance
- Waiver of Rights
- Receipt and Application of Proceeds
- Acceptance of Insurance
- Partial Utilization--Property Insurance

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

- Supervision and Superintendence
- Labor, Materials and Equipment
- Adjusting Progress Schedule
- Substitutes or "Or-Equal" Items
- Concerning Subcontractors, Suppliers and Others
- Patent Fees and Royalties
- Laws and Regulations
- Taxes
- Use of Premises
- Record Documents
- Safety and Protection
- Emergencies
- Shop Drawings and Samples
- Continuing the Work
- Indemnification

## ARTICLE 7 - OTHER WORK

- Related Work at Site
- Coordination

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

- Visits to Site
- Project Representation
- Clarifications and Interpretations
- Authorized Variations in Work
- Rejecting Defective Work
- Shop Drawings, Change Orders and Payments
- Determinations for Unit Prices
- Decisions on Disputes
- Limitations on Engineer's Responsibilities

## ARTICLE 10 - CHANGES IN THE WORK

## ARTICLE 11 - CHANGE OF CONTRACT PRICE

- Cost of the Work
- Contractor's Fee
- Cash Allowances
- Unit Price Work

ARTICLE 12 - CHANGE OF CONTRACT TIME

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

Warranty and Guarantee  
Access to Work  
Tests and Inspections  
Uncovering Work  
Owner May Stop Work  
Correction or Removal of Defective Work  
Acceptance of Defective Work  
Owner May Correct Defective Work

ARTICLE 14- PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values  
Application for Progress Payment  
Contractor's Warranty of Title  
Review of Applications for Progress Payments  
Substantial Completion  
Partial Utilization  
Final Inspection  
Final Application for Payment  
Final Payment and Acceptance  
Contractor's Continuing Obligation  
Waiver of Claims

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

Owner May Suspend Work  
Contractor May Stop Work or Terminate

ARTICLE 16 - ARBITRATION

ARTICLE 17 - MISCELLANEOUS

Giving Notice  
Computation of Time  
General

## ARTICLE 1 - DEFINITIONS

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

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

Agreement - The written agreement between OWNER and CONTRACTOR covering the work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

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

Bonds - Bid, performance and payment bonds and other instruments of security.

Change Order - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

Contract Documents - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

Contract Price - The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9 in the case of Unit Price Work).

Contract Time - The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

Contractor - The person, firm or corporation with whom OWNER has entered into the Agreement.

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, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

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 two parties to sign and deliver.

ENGINEER - The person, firm or corporation named as such in the Agreement.

Field Order - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.

General Requirements - Sections of Division 1 of the Specifications.

Laws and Regulations; Laws or Regulations - Laws, rules, regulations, ordinances, codes and/or orders.

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 period specified, OWNER will sign and deliver the Agreement.

Notice to Proceed - A written notice given by 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 CONTRACTOR'S obligations under the Contract Documents.

OWNER - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

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

Resident Project Representative - The authorized representative of ENGINEER who is assigned to the site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

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 - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Sub-contractor for the performance of a part of the Work at the site.

Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

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

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

Work Directive Change - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or

documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in paragraph 10.2.

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

## ARTICLE 2 PRELIMINARY MATTERS

### Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed, Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

### Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to two copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### Commencement of Contract Time: Notice to Proceed:

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

### Starting the Project:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

### Before Starting Construction:

2.5 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 and shall obtain a written

interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.6.2 a preliminary schedule of Shop Drawing submissions;  
and.

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work, which will be confirmed in writing by CONTRACTOR at the time of submission.

2.7 Before any Work at the site is started CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4.

Preconstruction Conference:

2.8 Within twenty days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6 to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

Finalizing Schedules:

2.9 At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

## ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not 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 that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3 If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

### Amending and Supplementing Contract Documents:

3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.4.1 a formal Written Amendment,
- 3.4.2 a Change order (pursuant to paragraph 10.1), or
- 3.4.3 a Work Directive Change (pursuant to paragraph 10.1)

As indicated in paragraphs 11.2 and 12.1 Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.5.1 a Field order (pursuant to paragraph 9.5)
- 3.5.2 ENGINEER's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.5.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.6 Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER 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 adaptation by ENGINEER.

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

Availability of Lands:

4.1 OWNER shall furnish, as indicated in the General Documents, the lands upon which the Work is to be performed, rights of way and easements for access thereto, and such other lands which are designated for the use of 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. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights of way or easements entitles CONTRACTOR to an extension of the Contract Time CONTRACTOR may make a claim therefor as provided in Article 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.

Physical Conditions:

4.2.1 Explorations and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions: if CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5 Possible Document Change: If ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Articles 11 and 12.

Physical Conditions--Underground Facilities:

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

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

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.



Reference Points:

4.4 OWNER shall provide engineering surveys to establish reference points for construction, which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), 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 the accurate replacement or relocation of such reference points by professionally qualified personnel.

ARTICLE 5 BONDS AND INSURANCE

Performance and Other Bonds:

5.1 CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U. S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the project is located or it ceases to meet the requirements or paragraph 5.1 CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER.

Contractor's Liability Insurance:

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

5.3.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

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

5.3.4 Claims for damages insured by personal injury liability coverage, which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

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

5.3.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 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.

The insurance required by this paragraph 5.3 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and ENGINEER by certified mail. 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 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

Contractual Liability Insurance:

5.4 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31.

Sections 5.5, 5.6 and 5.7, 5.8, 5.9 and 5.10 are deleted

## Waiver of Rights

5.11.1 OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of any property insurance applicable to the Work, and also waive all such rights against the Subcontractors, ENGINEER, ENGINEER's consultants and all other parties names as insureds in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, ENGINEER, ENGINEER's consultants and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

## Receipt and Application of Proceeds:

5.12 Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will 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 of paragraph 5.13. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13 OWNER as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, OWNER as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

## Acceptance of Insurance:

5.14 If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.7. (Sentence deleted) OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably require. Failure by OWNER or CONTRACTOR to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

Partial Utilization--Property Insurance:

5.15 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 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

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

6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have the authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as given to CONTRACTOR.

Labor, Materials and Equipment:

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. 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 Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary

facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

Adjusting Progress Schedule:

6.6 CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items:

6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers 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 or equal to that named. The procedure for review by ENGINEER will include the following as supplemented in the General Requirements. 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 and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute 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 will be identified in the application and available maintenance, repair and replacement

service will be indicated. The application will 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 may require CONTRACTOR to furnish at CONTRACTOR's expense additional data about the proposed substitute.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to ENGINEER, if CONTRACTOR submits sufficient information to allow ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in paragraph 6.7.1 as applied by ENGINEER and as may be supplemented in the General Requirements.

6.7.3 ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance, which will be evidenced, by either a Change order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents 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 each proposed substitute.

Concerning Subcontractors, Suppliers and Others:

6.8.1 CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such

Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

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

6.11 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 paragraph 5.11.

Patent Fees and Royalties:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

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

Laws and Regulations:

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

6.14.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws and Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes:

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

Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights of way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work. CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law.



CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17 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, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

Record Documents:

6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER or OWNER.

Safety and Protection:

6.20 CONTRACTOR shall be 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:

6.20.1 all employees on the Work and other persons and organizations who may be affected thereby;

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations 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 of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, 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, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). 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 ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21 CONTRACTOR shall designate a responsible representative 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 or OWNER.

#### Emergencies:

6.22 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 if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change order will be issued to document the consequences of the changes or variations.

#### Shop Drawings and Samples:

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as ENGINEER may require. The

data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

6.24 CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.25.1 Before submission of each Shop Drawing or sample Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.25.2 At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.

6.26 ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.2 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1.

6.28 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to ENGINEER's review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any such disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

Indemnification:

6.30 To the fullest extent permitted by Laws and Regulations CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of the negligence of any such party.

6.31 In any and all claims against OWNER or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

ARTICLE 7 OTHER WORK

Related Work at Site:

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefore which

shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

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

7.3 If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination:

7.4 If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor ENGINEER shall have any authority or responsibility in respect of such coordination.

## ARTICLE 8 OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.6 OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.7 In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

### Owner's Representative:

9.1 ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

### Visits to Site:

9.2 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.

Project Representation:

9.3 If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative 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 the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4 ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements 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, If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

Authorized Variations in Work:

9.5 ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents, which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6 ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7 In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.



9.8 In connection with ENGINEER's responsibilities as to Change orders, see Articles 10, 11 and 12.

9.9 In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determinations for Unit Prices:

9.10 ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to ENGINEER written notice of intention to appeal from such a decision.

Decisions on Disputes:

9.11 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 performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will 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 will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 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 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Limitations on ENGINEER's Responsibilities:

9.13 Neither ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise

such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" 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 a 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 shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 9.15 or 9.16.

9.15 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 responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.16 . ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

#### ARTICLE 10 - CHANGES IN THE WORK

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

10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12.

10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4 OWNER and CONTRACTOR shall execute appropriate Change orders (or Written Amendments) covering:

10.4.1 changes in the Work, which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3 changes in the Contract Price or Contract Time, which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## ARTICLE 11 CHANGE OF CONTRACT PRICE

11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3 The value of any Work covered by a Change order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive).

11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1).

11.3.3 On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

Cost of the Work:

11.4 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, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5.

11.4.1 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 costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

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

11.4.3 Payment 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 subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

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

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

11.4.5.3 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.

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

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

11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), 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 expense 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 11.6.2.

11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

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

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.9.

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

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4--all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4 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 the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 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.

11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR's Fee:

11.6 The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon;

11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2 the CONTRACTOR's Fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

11.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

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

11.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

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

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

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

Unit-Price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 9.10.

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

11.9.3 Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of such increase.

ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence



of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefor as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

**ARTICLE 13-WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS:  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**Warranty and Guarantee:**

13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. 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 Article 13.

**Access to Work:**

13.2 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, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

**Tests and Inspections:**

13.3 CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish ENGINEER the required certification of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval

prior to CONTRACTOR's purchase therefor for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above, which are required by the Contract Documents, shall be paid by OWNER (unless otherwise specified).

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

13.6 If any Work (including the work of others) 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 the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

#### Uncovering Work:

13.8 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.

13.9 If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount of extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

#### Owner May Stop the Work:

13.10 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers of 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.

Correction or Removal of Defective Work:

13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all 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. 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, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

Correction Period:

13.12. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected. Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

13.12.2 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and if, the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14 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 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies 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 the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs 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 and remedies hereunder.

## ARTICLE 14-PAYMENTS TO CONTRACTOR AND COMPLETION

### Schedule of Values:

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### Application for Progress Payment:

14.2 At least twenty days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitable stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill for sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### CONTRACTOR's Warranty of Title:

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

### Review of Applications for Progress Payments:

14.4 ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 ENGINEER's recommendation of any payment requested in an Application for 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 Payment and the accompanying data and schedules that the Work has progressed to the point indicated; 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 whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. 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 beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6 ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend 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 opinion to protect OWNER from loss because:

14.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,

14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4 of ENGINEER's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action.)

### Substantial Completion:

14.8 When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. 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 prepare and deliver to OWNER a tentative certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

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

### Partial Utilization:

14.10 Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

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

and request ENGINEER to issue a certificate of Substantial Completion for that



part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2 OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any, such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and 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 and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with 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 guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

#### Final Inspection:

14.11 Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, 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.

#### Final Application for Payment:

14.12 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 (as provided in paragraph 6.19) 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 14.16), 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, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens 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 Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier 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 Lien.

Final Payment and Acceptance:

14.13 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's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application 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 14.16. 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. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR.

to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except it shall not constitute a waiver of claims.

Contractor's Continuing Obligation:

14.15 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 any review and approval of a Shop Drawing or samples submission, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will 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 (except as provided in paragraph 14.16).

Waiver of Claims:

14.16 The making and acceptance of final payment will constitute:

14.16.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.16.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

Owner May Suspend Work:

15.1 Upon the occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any

such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or order contract, whose appointment or authority to take charge or property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

15.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8 if CONTRACTOR disregards the authority of ENGINEER; or

15.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change order, but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

15.4 Upon seven 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, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

Contractor May Stop Work or Terminate:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven 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 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 the obligations under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16 - ARBITRATION

16.1 All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of, or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.16) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining subject to the limitations of this Article 16. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2 No demand for arbitration of any claim, dispute or other matter that is required to be referred to, ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which ENGINEER has rendered a decision or (b) the tenth day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has

rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period shall result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3 Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty day or ten day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.4 No arbitration arising out of or relating to, the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's agents, employees or consultants) who is not a party to this contract unless:

16.4.1 the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration,

16.4.2 such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.4.3 the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5 The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. S§10,11).

## ARTICLE 17 - MISCELLANEOUS

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

Computation of Time:

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

17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

GENERAL:

17.3 Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party for whose acts the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or as waiver of the provisions of any applicable statute of limitations or repose.

17.4 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 guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

## SUPPLEMENTARY CONDITIONS

### 1.1 SECTION INCLUDES

- A. Counterparts of the Agreement.
- B. Types and Limits of Insurance.
- C. Taxes.
- D. Retainage.
- E. Overtime Work.
- F. Contract Time and Liquidated Damages.
- G. Warranty and Correction Period
- H. Arbitration.

### 1.2 COUNTERPARTS OF THE AGREEMENT

- A. Upon the Notice of Award, Engineer shall furnish Contractor with two copies of the Agreement and other Contract Documents, along with appropriate instructions.
- B. Contractor shall execute and deliver all copies to Owner, with the required Bonds, within fifteen (15) days of the Notice of Award.
- C. Upon execution by Owner, two copies will be returned to Contractor who shall promptly deliver one copy to his surety. Owner will retain one copy and Engineer will retain one copy.

### 1.3 TYPES AND LIMITS OF INSURANCE

- A. In accordance with the insurance requirements of paragraph 5.3 in the General Conditions, Contractor shall provide the coverage specified herein. Satisfactory certificates of insurance shall be filed with Owner prior to beginning the work.
- B. The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:
  - 1. 5.3.1 and 5.3.2 Worker's Compensation, etc. under paragraphs 5.3.1 and 5.3.2 of the General Conditions:
    - (1) State: Statutory
    - (2) Applicable Federal (e.g. Longshoreman's): Statutory
  - (3) Employer's liability \$200,000. 5.3.3, 5.3.4, 5.3.5 and 5.3.6 Comprehensive General Liability (under Paragraphs 5.3.2 through 5.3.6 of the General Conditions):
    - (1) Bodily Injury \$1,000,000 Each Occurrence
    - \$2,000,000 Annual Aggregate, Products and Completed Operation



(2) Property Damage:

\$1,000,000 Each Occurrence  
\$1,000,000 Annual Aggregate(3)  
Property Damage Liability insurance will provide explosion, collapse and  
underground coverages where applicable(4) Personal injury with  
employment exclusion deleted  
\$1,000,000 Annual Aggregate

2. 5.3.7 Comprehensive Automobile Liability:

1.4 TAXES

- A. In addition to the requirements of paragraph 6.15 in the General Conditions, the following provisions apply:
1. Owner is exempt from Colorado State Sales and Use Taxes on materials to be permanently incorporated in the work. Said taxes shall not be included in the Contract Price.
  2. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division for an exemption certificate and purchase the materials tax free (39-26-113 CI) (a) (XIX) CRS 1973 as amended, House Bill 1451 effective June 7, 1979.

1.5 RETAINAGE

A. OWNER REQUIREMENTS

1. As indicated in the General Conditions, as the work progresses, partial payments will be made at the end of each calendar month, or as soon thereafter as practicable, if the contractor is satisfactorily performing the contract.
2. An amount equivalent to five percent (5%) of the calculated value of completed work shall be withheld until the contract is completed satisfactorily and finally accepted by the Town, which shall mean the date upon which the items contained within or on the Final Punch List are complete.
3. No payments will be made for material delivered to the site until they have been satisfactorily incorporated into the work unless otherwise provided for within the contract documents.

B. STATE REQUIREMENTS

1. Owner is required by law (C.R.S. 38-26-107) to withhold from all payments to Contractor sufficient funds to insure the payment of all claims for labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Contractor or his subcontractors in or about the performance of the work.
2. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with Owner a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly-authorized agents or assigns.
3. Such funds shall not be withheld longer than ninety days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with Owner.

4. At the expiration of such ninety-day period, Owner shall pay to Contractor such moneys and funds as are not the subject of suit and lis pendens notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments which may result from such suit.

#### 1.6 OVERTIME WORK

- A. Except as indicated otherwise in the Contract Documents no work shall be done between 6:00 p.m. and 7:00 a.m. or on Saturdays, Sundays or legal holidays without the written permission of the Owner.
- B. Emergency work may be done without prior permission.
- C. Night work may be undertaken as a regular procedure with the written permission of Owner; such permission, however, may be revoked at any time by Owner if contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the work at night.

#### 1.7 CONTRACT TIME AND LIQUIDATED DAMAGES

##### A. NOTICE TO PROCEED

1. Neither the Contractor nor any subcontractor shall commence work on the Project prior to receipt of the written Notice to proceed issued by the Owner.
2. The Contractor shall commence work as soon as practicable after the starting date specified in the Notice to Proceed.
3. All work under the Contract shall be completed within the number of working days stated in the Bid plus extensions beginning with the day following the starting date specified in the Notice to Proceed.
4. The Contractor shall notify the Engineer 24 hours in advance of the time and place where work will begin. Two working days' advance notice is required for surveying and staking.

##### B. DETERMINATION AND EXTENSION OF CONTRACT TIME

1. The number of days allowed for the completion of work included in the Contract will be stated in the Bid. The Contract time shall consist of the number of working days specified, including all weekends and legal holidays. All working days elapsing between the effective dates of any written notice from the Engineer to suspend work and to resume work following suspension, shall be excluded, provided the suspension is not due to the Contractor's actions or inactions.
2. The Contractor may submit a written request for an extension to the completion time. The request must set forth specific reasons of conditions beyond the control of or through no fault of the Contractor. The Engineer shall evaluate the request and make a recommendation to the Owner who may extend the time for completion as the conditions justify. If granted, the extended time for completion shall be in full effect the same as though it were the original time for completion.

##### C. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

1. The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice to Proceed. The Contractor will proceed with the work as such a rate of progress to insure full completion within the Contract time. It is

expressly understood and agreed, by and between the Contractor and the Owner, that the Contract time for the completion of the work described herein in a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

2. Should the Contractor fail to complete the work within the Contract time, or extension of time granted by the Owner, the Contractor shall pay the Owner the amount of **\$1,600.00** in accordance with 108.09, for each calendar day the Contractor may be in default of the time stipulated in the Contract Documents.
3. The Contractor shall not be charged with liquidated damages provided the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Owner or Engineer.
  - (a) To any preference, priority or allocation order duly issued by the Owner.
  - (b) To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God,, or of the public enemy, acts of the Owner, acts of another Contractor in performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, material or fuel shortages due to governmental regulations or allocations, freight embargoes and abnormal and unforeseeable inclement weather.

## 1.8 ARBITRATION

- A. Delete Article 16 of the General Conditions in its entirety.

## **SPECIAL PROVISIONS**

### SECTION INCLUDES

1. CDOT Specification Requirements
2. General
3. Scope of Project
4. Line Item Descriptions - General Construction
5. Miscellaneous Work
6. Construction Schedule and Inspections
7. Control of Vehicular and Pedestrian Traffic
8. Payment
9. Other Contractor Responsibilities
10. Unsuitable Subgrade
11. Surface Restoration
12. Grade Stakes
13. Testing, Soils
14. Asphalt/Concrete Price Reductions
15. Erosion and Sediment Control Procedures
16. Excavated Material
17. Seeding
18. Sidewalk Protection and Detour
19. Protection of Migratory Birds

1. CDOT SPECIFICATION REQUIREMENTS

- A. Materials used in construction shall conform to the requirements of these specifications. Except for manufacturer's standard warranty, material warranty requirements in the specifications shall not apply.
- B. Construction shall conform to the requirements of the Contract. General construction warranty requirements in the specifications shall not apply.

2. GENERAL

- A. The work covered by these specifications consists of furnishing all labor, tools, equipment, materials, mobilization, project closeout, incidentals, and performing all operations and services in connection with the Project scope of work defined in the Drawings and Specifications.
- B. All work shall be done in accordance with the CDOT 2017 Standard Specifications for Road and Bridge Construction and CDOT M&S Standards.
- C. Contractor shall include the Town of Palmer Lake and CDOT as additionally insured on their general liability and automobile liability policies.
- D. Where specified in the Contract Documents, "the Engineer" shall refer to an engineering representative appointed by the Town for the Project.

3. SCOPE OF PROJECT

- A. This project involves improvements to roadway paving and construction of new concrete lined ditches along Sun Crest Road, Douglas Avenue and Forest View Road. Construction will also include new paving along limited portions of Trinidad Lane and Hilltop Lane and a stormwater pipe crossing and outlet structure at the southerly extents of the project, under Forest View Road. The construction will also entail the reconstruction of existing driveways and installation of new storm pipe crossings.
- B. Roadway Improvements generally consists of:  
The installation of approximately 2,627 LF of paved roadway with base course, to include rap/aggregate shoulders, concrete ditches, miscellaneous grading, and other work incidental for completion.

4. LINE ITEM DESCRIPTIONS - GENERAL CONSTRUCTION

- A. All work shall be performed in accordance with the Drawings and Specifications. Each work item shall include all labor, tools, equipment, materials, and incidentals necessary to complete the work.

5. MISCELLANEOUS WORK

- A. Miscellaneous work is considered incidental to the project and is not a separate line item.

6. CONSTRUCTION SCHEDULE AND INSPECTIONS

- A. The Contractor shall provide a written outline of construction methods and schedules at least 7 days prior to the scheduled Notice to Proceed.
- B. The Town will perform compaction tests of compacted aggregate materials. Testing does not relieve Contractor from performing work to contract requirements. Re-testing required because of non-conformance to specified requirements shall be performed at the discretion of the Engineer and may be subject to the current fee, which will be charged to Contractor.
- C. Engineer shall be notified 24 hours prior to expected time for beginning base course compaction operations and for commencing the installation of asphalt, curb & gutter, and any miscellaneous concrete.

7. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC

- A. The Contractor shall flag or shift traffic during construction activities. Contractor shall accommodate adjacent property owners and businesses by providing access and parking within the street right-of-way as near to properties as possible.
- B. The Contractor shall be fully responsible for providing professional signage services to provide and place all traffic control signs and devices during the total construction time of the Project.
- C. Traffic control shall conform to the intent and instructions provided by the Engineer and the Manual of Uniform Traffic Control Devices (MUTCD). The Contractor shall submit a prepared traffic control plan and tentative schedule to the Town Public Works Inspector and CDOT for approval prior to the start of any work on the Project site.
- D. The Contractor is responsible for notifying the Police Department, the Fire Authority, and any emergency medical services of any street closures or blockages, due to construction, prior to beginning any such activity. Contractor shall also maintain the means at all times to provide emergency access routes to all properties located along the construction site when needed.

8. PAYMENT

- A. Payment will be made at the applicable unit bid total quantity or lump sum price for the item, which payment shall be full compensation for furnishing all material, equipment, labor and maintenance, and all of the Contractor's costs for services rendered and for the complete construction of the Project.
- B. The quantities given in the Bid Schedule are estimated quantities and payment will be made on actual measured lengths, volumes, and areas of each category in the Bid Schedule or as defined herein or the Specifications.

- C. Where unit prices refer to linear feet, the final installed length, as measured along the centerline or flow-line, shall be used in determining quantities for payment. Where unit prices refer to square feet, the final installed surface area shall be used in determining quantities for payment. Where unit prices refer to volume, the final installed amount shall be used in determining quantities for payment. Contractor shall provide Engineer with all haul tickets relevant for materials bid by volume for verification before payment is made.
- D. Any work not specifically set forth as a pay item in the Bid Schedule, and work described in Special Provision Section 6 shall be considered a subsidiary obligation of the Contractor, and all costs in connection therewith shall be included in the prices bid for the various items of work.
- E. It is the Contractor's responsibility to verify each total quantity for accuracy of measurement. Should a significant measurement or quantity error be discovered, the Contractor must notify the Engineer prior to construction related to such quantities having any error. If the Contractor's fails to give notice of such error prior to work being done, the error shall be remedied at the Contractor's expense.
- F. Surface restoration and any other work not specifically set forth as a pay item in the Bid Schedule shall be considered a subsidiary obligation of the Contractor, and all costs in connection therewith shall be included in the prices bid for the various items of work. This includes, but is not limited to, gravel or asphalt patch in driveways and concrete restoration work. Utilities (esp. power poles, phone pedestals, manholes, and meter pits) shown on plans are approximate, may have since been relocated to facilitate construction, and shall be field verified.
- G. The quantities given in the Bid Schedule are estimated quantities and payment will be made on actual measured lengths and areas or each category in the Bid Schedule or as defined herein or the Specifications.
- H. Pay Requests for progress payments shall have an additional requirement for approval by the State of Colorado Department of Transportation, the funding agency. This may cause some delay in payment to the Contractor.

9. OTHER CONTRACTOR RESPONSIBILITIES

- A. The Contractor must obtain an excavation permit with the Town of Palmer Lake, the fee of which will be waived, prior to the beginning of any work operations.
- B. The Contractor must be a licensed and bonded contractor with the Town of Palmer Lake and provide proof of Workers Compensation Insurance for self and all employees performing work, and all Subcontractors and their employees.
- C. The Contractor shall assume responsibility for disposing of removed vegetation, tree material, soil, asphalt, concrete, reinforcement, structural steel, and other surplus materials at an acceptable site at Contractor's expense.
- D. The Contractor shall assume responsibility for performing all work in a workmanlike manner with due care being taken to avoid unnecessary damage to property. Contractor shall be responsible for all damage resulting from carelessness or work performed in an irresponsible or unworkmanlike manner.
- E. The Contractor shall obtain all utility locates prior to excavating and shall be liable for all damages to existing structures and utilities and shall save the Town

- harmless for any liability or expense for injuries, damages, or repairs.
- F. Any work not covered in the Specifications shall conform to industry standards.
- G. The Contractor is responsible for conforming to all applicable State and local Codes and Ordinances.
- H. The Contractor shall provide any additional construction surveying and/or staking as he/she deems necessary to complete the Project as intended per the Specifications.
- I. The Contractor shall be responsible for all costs and/or compliance with all applicable State and Local codes and regulations as well as EPA and OSHA requirements

10. TESTING SOILS

- A. The Town of Palmer Lake will be responsible for providing all necessary compaction tests for Class 6 bedding, excavation backfill and Class 6 base course for concrete work and asphalt.
- B. The Contractor shall be responsible for supplying the Town of Palmer Lake, at the Contractor's expense, with suitable soils certifications from a licensed independent soil testing laboratory, with gradation and density/proctor data for any material used in the Project for backfill.
- C. The Town may, at its expense, employ the services of an independent asphalt density/concrete strength testing service to test the pavement during and after installation of pavement. The Contractor shall coordinate Work with inspection services by providing the Engineer with minimum 24-hour notice of scheduled paving. The Town will employ an independent inspection laboratory to take random core samples of finished HMA pavement (at least one every 200 linear feet) to be measured for thickness and density. Final acceptance will be based on the average thickness and density/strength determined by the core samples.
- D. Contractor shall submit all Certificates of Compliance (COC) for all materials and follow CDOT "Buy American" standards.

11. PROTECTION OF MIGRATORY BIRDS

- A. CDOT Specifications Section 240 applies for the protection of migratory birds.  
Section 240 follows:



SECTION 240  
PROTECTION OF MIGRATORY BIRDS  
BIOLOGICAL WORK PERFORMED BY A CDOT BIOLOGIST

Section 240 is hereby added to the Standard Specifications for this project as follows:

**DESCRIPTION**

**240.01** This work consists of protecting migratory birds during construction.

**MATERIALS AND CONSTRUCTION REQUIREMENTS**

**240.02** The Contractor shall schedule clearing and grubbing operations and work on structures to avoid taking (pursue, hunt, take, capture or kill; attempt to take, capture, kill or possess) migratory birds protected by the Migratory Bird Treaty Act (MBTA).

(a) *Vegetation Removal.* When possible, vegetation shall be cleared prior to the time active nests are present. Vegetation removal activities shall be timed to avoid the migratory bird breeding season which begins on April 1 and runs to August 31. All areas scheduled for clearing and grubbing between April 1 and August 31 shall first be surveyed within the work limits by a CDOT biologist for active migratory bird nests. The CDOT biologist will also survey for active migratory bird nests within 50 feet outside of the work limits. Project personnel shall enter areas outside CDOT right of way only if a Form 730, *Permission to Enter Property*, has been signed by the property owner. The Contractor shall avoid all active migratory bird nests. The Contractor shall avoid the area within 50 feet of the active nests or the area within the distance recommended by the biologist until all nests within that area have become inactive. Inactive nest removal and other necessary measures shall be incorporated into the work as follows:

1. *Tree and Shrub Removal or Trimming.* Tree and shrub removal or trimming shall occur before April 1 or after August 31 if possible. If tree and shrub removal or trimming will occur between April 1 and August 31, a survey for active nests will be conducted by the CDOT biologist within the seven days immediately prior to the beginning of work in each area or phase of tree and shrub removal or trimming. The Contractor shall notify the Engineer at least ten working days in advance of the need for the CDOT biologist to perform the survey.

If an active nest containing eggs or young birds is found, the tree or shrub containing the active nest shall remain undisturbed and protected until the nest becomes inactive. The nest shall be protected by placing fence (plastic) a minimum distance of 50 feet from each nest to be undisturbed. This buffer dimension may be changed if determined appropriate by the CDOT biologist and approved by the Engineer. Work shall not proceed within the fenced buffer area until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges but will be charged as contract time.

2. *Grasses and Other Vegetation Management.* Due to the potential for encountering ground nesting birds' habitat, if work occurs between April 1 and August 31, the area shall be surveyed by the CDOT biologist within the seven days immediately prior to ground disturbing activities. The Contractor shall notify the Engineer at least ten working days in advance of the need for the CDOT biologist to perform the survey.

The undisturbed ground cover to 50 feet beyond the planned disturbance, or to the right of way line, whichever is less, shall be maintained at a height of 6 inches or less beginning April 1 and continuing until August 31 or until the end of ground disturbance work, whichever comes first.

SECTION 240  
PROTECTION OF MIGRATORY BIRDS  
BIOLOGICAL WORK PERFORMED BY A CDOT BIOLOGIST

If birds establish a nest within the survey area, an appropriate buffer of 50 feet will be established around the nest by the CDOT biologist. This buffer dimension may be changed if determined appropriate by the CDOT biologist and approved by the Engineer. The Contractor shall install fence (plastic) at the perimeter of the buffer. Work shall not proceed within the buffer until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges, but will be charged as contract time.

- (b) *Raptors.* The CDOT wildlife biologist shall conduct raptor nest surveys within 0.5 mile of the construction site within the seven days immediately prior to the start of construction and prior to each construction phase. This survey can be done with binoculars. If construction activities are located within the Colorado Parks and Wildlife (CPW) recommended buffer zone for specific raptors, "NO WORK" zones shall be established around active sites during construction according to the CPW standards or as recommended by the wildlife biologist in consultation with the CPW. The "NO WORK" zone shall be marked with either fencing or signing. Work shall not proceed within a "NO WORK" zone until the wildlife biologist has determined that the young have fledged or the nest is unoccupied.
- (c) *Taking of a Migratory Bird.* The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.

**METHOD OF MEASUREMENT**

**240.03** Removal of nests will be measured by the actual number of man-hours spent removing inactive nests just prior to and during the breeding season, April 1 through August 31. During this period, the Contractor shall submit to the Engineer each week for approval a list of the workers who removed nests and the number of hours each one spent removing nests.

Netting will be measured by the square yard of material placed to keep birds from nesting on the structure. Square yards will be calculated using the length of netting measured where it is attached to the ground and the average height of the netting where it is attached to the structure.

SECTION 240  
PROTECTION OF MIGRATORY BIRDS  
BIOLOGICAL WORK PERFORMED BY A CDOT BIOLOGIST

**BASIS OF PAYMENT**

**240.04** The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Removal of Nests	Hour
Netting	Square Yard

Payment for Removal of Nests will be full compensation for all work and material required to complete the work.

Payment for netting will be full compensation for all work and material required to complete the item. Overlaps of netting will not be measured and paid for separately, but shall be included in the work. Maintenance and replacement, removal, and disposal of netting will not be measured and paid for separately, but shall be included in the work.

Clearing and grubbing will be measured and paid for in accordance with Section 201. Mowing will not be measured and paid for separately, but shall be included in the work.

Removal and trimming of trees will be measured and paid for in accordance with Section 202.

Fence (Plastic) will be measured and paid for in accordance with Section 607.

END SECTION

## TRAFFIC CONTROL PLAN – GENERAL

The key elements of the Contractor's method of handling traffic (MHT) are outlined in subsection 630.10(a).

The components of the TCP for this project are included in the following:

- (1) Subsection 104.04 and Section 630 of the specifications.
- (2) Standard Plan S-630-1, Traffic Controls for Highway Construction and Standard Plan S-630-2.

Unless otherwise approved by the Engineer, the Contractor's equipment shall follow normal and legal traffic movements. The Contractor's ingress and egress of the work area shall be accomplished with as little disruption to traffic as possible. Traffic control devices shall be removed by picking up the devices in a reverse sequence to that used for installation. This may require moving backwards through the work zone. When located behind barrier or at other locations shown on approved traffic control plans, equipment may operate in a direction opposite to adjacent traffic.

Special Traffic Control Plan requirements for this project are as follows:

During the construction of this project, traffic shall use the present traveled roadway unless identified on the plans or approved by the Engineer.

The Contractor shall not have construction equipment or materials in the lanes open to traffic at any time, unless approved by the Engineer.

All construction vehicles shall be equipped with flashing amber lights. Equipment to be used at night shall also be equipped with flashing amber lights. Flashing amber lights on vehicles and equipment shall be visible from all directions.

The Contractor shall coordinate and cooperate fully with the Department, utility owners, and other contractors, to assure adequate and proper traffic control is provided. The Contractor shall coordinate and cooperate fully with others providing traffic control for other operations to assure that work or traffic control devices do not interfere with the free flow of traffic except as allowed by the approved Method of Handling Traffic.

*Access Maintenance Plan.* The Contractor shall maintain access to all adjacent properties at all times. The Contractor shall prepare and submit an Access Maintenance Plan as part of the method of handling traffic, which shall be approved by the Engineer prior to beginning work. The Access Maintenance Plan shall be developed in coordination with and based on the requirements of the affected property owners and tenants. Seven days prior to construction, the Contractor shall coordinate with property owners regarding any construction activities adjacent to their property. This plan shall detail all barricades, ramps, signs, and temporary means of access required for the property owners or tenants. Five working days prior to commencing any work which affects access to a property, the Access Maintenance Plan must be submitted for the affected properties and incorporated in the MHT. The Access Maintenance Plan shall detail the work necessary to provide continued access to the mailboxes by the postal service. The Contractor shall establish a temporary mailbox position any time an access is repositioned. The Contractor shall be responsible for coordinating any new location of a mailbox with the property owner(s) and the post office. The Access Maintenance Plan shall include documentation of the required coordination, including the approval signature of each affected owner or tenant. Should the Contractor be unable to obtain approval and signatures, documentation of the efforts made to obtain said approval and signatures must be submitted. All costs incidental to the maintenance of access will not be paid for separately but shall be included in the work unless otherwise specified.

At least one week prior to starting construction, the Contractor shall notify the Town of Palmer Lake Project Manager of the date the Contractor intends to start construction.

All costs incidental to the foregoing requirements shall be included in the original contract prices for the project, including any additional traffic control items required for haul routes into or away from the project.

#### HIERARCHY OF PLANS AND SPECIFICATIONS

The hierarchy of plans and specifications for this project is as follows:

- 1 General Conditions
- 2 Supplementary Conditions
- 3 Special Provisions
- 4 Detailed Plans
- 5 Standard Plans
- 6 Standard Specifications

END SPECIAL PROVISIONS