

CONSTRUCTION DOCUMENTS
FOR THE
CUB RIVER WETLAND MITIGATION SITE
PROJECT
CACHE COUNTY, Utah
AUGUST 2026

PREPARED BY:



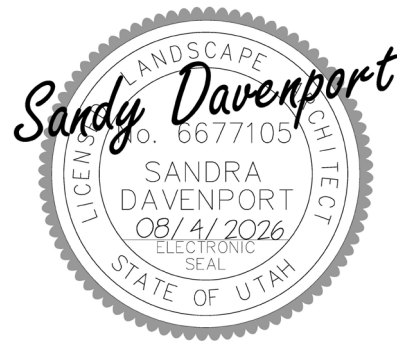
**CONTRACT DOCUMENTS,
TECHNICAL SPECIFICATIONS
AND
PROJECT DRAWINGS**

FOR

**CUB RIVER WETLAND MITIGATION SITE
PROJECT**

August 2026

**Prepared by:
BIO-WEST, INC.
1063 West 1400 North
Logan, Utah 84321
Tel: (435) 752-4202**



**Sandy Davenport, L.A.
State of Utah,
Project Landscape Architect**

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NOTICE TO CONTRACTORS

Sealed bids will be received by North Logan City and Hyde Park City for the:

CUB RIVER WETLAND MITIGATION SITE PROJECT

The project generally includes the construction of wetland emergent marsh, woody riparian, and pond areas; a flood control berm; culverts with flap gates; a culvert with control gate; a rail fence; landscape seeding; landscape shrub and tree planting; and placing fill material in farm field areas.

Bids will be in accordance with the Contract Documents prepared by BIO-WEST Inc. (435) 752-4202. Copies of the Contract Documents will be available on **August 17, 2026**, at the office of the Owner's Representative located at 1063 W 1400 N, Logan, Utah 84321 (BIO-WEST office). Digital "pdf" copies of the Contract Documents will also be available. Please address questions on the project to Sandy Davenport (435) 752-4202 or by email sdavenport@bio-west.com.

A non-mandatory **pre-bid tour will be held on August 31, 10 a.m. (local time)**. Meet at the staging area of the project. Attendance at the pre-bid meeting is recommended. It is the Contractor's responsibility to walk the project and become familiar with the conditions of the project site.

Bids will be received at the office of the Owner's Representative located at 1063 W 1400 N, Logan, Utah 84321 until the hour of **12:00 p.m. (local time) on September 21, 2026**, at which time they will be opened and read aloud in said office.

Bid security, which must be on the Bid Bond form provided with the Construction Documents or on approved Bid Bond documents provided by the Bonding Agency, in the amount of five percent (5%) of the bid, made payable to North Logan City, shall accompany the bid. A certified or cashier's check may be used for the bid bond.

North Logan City and Hyde Park City reserves the right to reject any or all bids and to waive any formality or technicality in any bid.

Publication Dates: **August 17, 19, and 21, 2026**.

INSTRUCTIONS TO BIDDERS

1. Drawings and Specifications, Other Contract Documents, Permits

Drawings and Specifications, as well as other available Contract Documents, may be obtained from: BIO-WEST, Inc. located at 1063 W 1400 N in Logan, UT. Contact Sandy Davenport at (435) 752-4202 or at sdavenport@bio-west.com to obtain electronic versions of the contract documents.

2. Proposals

Before submitting a Proposal (Bid), each Bidder shall carefully examine the Contract Documents; shall visit the site of the Work; shall fully inform themselves as to all existing conditions and limitations; and shall include in the Proposal the cost of all items required by the Contract Documents. The project shall be awarded to one contractor for the completion of the Cub River Wetland Mitigation Site Project.

If the Bidder observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the Bidder shall promptly notify the Owners Representative and the necessary changes shall be accomplished by Addendum.

The Proposal must be typed or legibly handwritten in ink on the form provided with these Construction Documents and submitted in a sealed envelope at the location specified by the Notice to Contractor's prior to the time designated for the opening of Bids.

3. Contract and Bond

The Contractor's Agreement will be on the form found in the specifications. The Contract Time will be as indicated in the Agreement. The successful Bidder, simultaneously with the execution of the Contract Agreement, will be required to furnish a performance bond and a payment bond upon the forms provided along with the Contract Documents. The performance and payment bonds shall be for an amount equal to one hundred percent (100%) of the Contract Sum and secured from a company that meets the requirements specified in the requisite forms.

4. Listing of Subcontractors, Suppliers & Vendors

A listing of subcontractors, suppliers, and vendors shall be provided with the Bids. Owner may withhold awarding the contract to a particular Bidder if one or more of the proposed subcontractors, suppliers and vendors are considered by the Owner to be unqualified to do the Work or for other reason in the best interest of North Logan City and Hyde Park City.

Copies of all Bids or other proposals from Subcontractors and Sub-subcontractors shall, upon request of the Owner, be submitted to the Owner for review.

5. Interpretation of Drawings and Specifications

If any person or entity contemplating submitting a Bid is in doubt as to the meaning of any part of the drawings, specifications or other Contract Documents, such person shall submit to the

Owners Representative a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by Addenda duly issued and a copy of such Addenda will be mailed or delivered to each person or entity receiving a set of documents. Neither the Owner nor the Owners Representative will be responsible for any other explanations or interpretations of the proposed documents.

6. Addenda

Any Addenda issued during the time of Bidding shall become part of the documents for the preparation of the Bid, shall be covered in the Bid, and shall be made a part of the Contract.

7. Award of Contract

The Contract will be awarded as soon as possible to the lowest, responsive Bidder, based on the lowest Base Bid, provided the Bid is reasonable, and is in the interests of the Owner. The Owner reserves the right to waive any technicalities or formalities in any Bid or in the Bidding. All applicable laws, ordinances, and rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout. A conditional or qualified Bid will not be accepted.

8. Qualifications

The Contractor's and subcontractors' past performance, organization, equipment and ability to perform and complete their contracts in the manner and within the time limit specified will be elements, along with the cash amount of the Bid, which will be considered by the Owner in the letting of the contract. The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

9. Right to Reject Proposals

Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work and to negotiate contract terms with the successful Bidder, and the right to disregard all nonconforming, nonresponsive or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Owner.

10. Return of Bid Security

Cashier or certified checks of the successful Bidder will be returned upon acceptance of the 100% performance bond and separate 100% payment bond. Cashier or certified checks of other Bidders, not previously forfeited, will be returned as soon as it is determined that the Bids represented by the checks will receive no further consideration for the project.

11. Time is of the Essence

Time is of the essence in regard to all the requirements of the Contract Documents. Each Bid must include a detailed schedule for construction completion showing the anticipated beginning date, the nature and sequence of construction activity including implementation of construction site stormwater erosion control measures, obtaining of any permits, and the approximate completion date. The time to complete the work shall be less than or equal to the time allowed to complete the work as shown on the Bid form, but shall not exceed the time allowed for completion as shown on the Bid form

12. Withdrawal of Bids

Bids may be withdrawn on written request received from Bidders prior to the time fixed for opening. Negligence on the part of the Bidder in preparing the Bid confers no right for the withdrawal of the Bid after it has been opened.

13. Product Approvals

Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the Contract Documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the Owners Representative. Requests for the information pertaining to said approval must be submitted to the Owners Representative no later than four (4) working days (not including Saturday, Sunday or State holidays) prior to the Bid opening. The Owners Representative's written approval will be in an issued Addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the Owners Representative.

14. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Contractors shall respond promptly to any inquiry in writing by the Owner to any concern of financial responsibility of the Contractor, Subcontractor or Sub-subcontractor.

15. Contractor Verification Requirements

Contractors shall be in compliance with Utah Code Annotated Section 63G-11-103(2)(a) it states, "Each public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee." Utah Code Annotated Section 63G-11-103(3) states: "Beginning July 1, 2009, a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the State Verification system to verify the work eligibility status of the contractor's new employees that are employed in the state." Failure to comply with these requirements may result in the disqualification of the contractor to enter into a contract with North Logan City and Hyde Park City to perform work on this project.

16. Liquidated Damages

Liquidated Damages are a part of this Contract. The only way to extend the completion date for a project is by an approved Change Order. If the work is not completed by the completion

dates as set by the contract agreement or as adjusted by Change Order, Liquidated Damages will be imposed for every day, Sundays and City observed holidays excluded, that the work proceeds past the completion date, including time to complete the "Punch List" items.

17. Site Inspection

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents, including special provisions and the APWA Standards and Specifications. Bidders must also satisfy themselves of the accuracy of the estimated quantities in the Bid Schedule by examination of the site and review of the Drawings and Specifications including Addenda. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

18. Federal Participation Disclosure

This project will be partially funded with Federal funds from the United States Department of Commerce, Economic Development Administration and therefore is subject to the Federal laws and regulations associated with that program.

BID PROPOSAL

North Logan City
2525 North 00 East, North Logan, UT 84341

Hyde Park City
113 East Center Street, Hyde Park, UT 84318

The undersigned hereby certifies that he/she has examined the site, has read and thoroughly understands the Contract Documents governing the work embraced in this improvement and the method of which payment will be made for said work, and hereby proposes to undertake and complete said work in accordance with said Construction Documents for the bid prices indicated in the attached Bid Schedule.

Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern. The bid prices shall include all mobilization, labor, materials, overhead, profit, insurance, etc., to cover the completed work.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informality in the bidding. The Bidder agrees that this bid shall be good and may not be withdrawn for a period of thirty (30) calendar days and deliver a Performance and Payment bond.

The bid security attached in the sum of

_____ (\$ _____)
 is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully Submitted:

By: _____ Title _____

_____ Contact Name

_____ Business Address

_____ Telephone

(SEAL - if bid is by a corporation)

BID SCHEDULE

NOTE: Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices. Bid prices shall include all applicable taxes and fees.

Cub River Wetland Mitigation Site

August 2026

North Logan Wetland Mitigation Area Bid						
Item No.	APWA Spec.	Classification of Work	QTY	Unit	Unit Price	TOTAL Cost
1	01 57 00	Temporary Controls Create and Implement Storm Water Pollution Prevention Plan (SWPPP)	1	Lump Sum		
2	01 71 13	Mobilization and Demobilization (10%)	1	Lump Sum		
3	01 71 23	Construction Layout	1	Lump Sum		
4	01 57 00	Stabilized Construction Entrance.	1,000	Square Feet		
5	01 57 00	Silt Fence	1,500	Linear Feet		
6	06 61 00	Rail Fence	1,020	Linear Feet		
7	31 05 13	Common Fill. Includes borrow from on-site excavation	5,100	Cubic Yard		
8	31 11 00	Site Clearing. Clear and Grub.	17,000	Square Yard		
9	31 23 16	Strip, Stockpile and Spread Topsoil	17,000	Square Yard		
10	31 23 16	Strip, Stockpile and Spread Topsoil in farm field Landscape Grading areas.	18,360	Square Yard		
11	31 23 16	Excavation. Cut (Cut 8900 CY minus Fill 5100 = CY)	3,800	Cubic Yard		
12	32 91 19	Landscape Grading. Includes placing backfill material on farm field.	3,800	Cubic Yard		
13	32 92 00	Turf and Grass. Supply and install WETLAND FRINGE SEED MIX and hydro mulch.	0.2	Acre		
14	32 92 00	Turf and Grass. Supply and install EMERGENT WETLAND SEED MIX and hydro mulch.	1.3	Acre		
15	32 92 00	Turf and Grass. Supply and install UPLAND SEED MIX and hydro mulch.	1.0	Acre		
16	32 93 13	Ground Cover. Supply and install shrubs (40 cu in).	1,700	Each		
17	32 93 43	Tree. Supply and Install trees (5 gal).	230	Each		
18	32 93 43	Supply and Install Wire Cage at Populus tree species	80	Each		
19	32 01 90	Maintenance of Planting. Includes water, weed, repair and protect installed plantings until work is accepted.	1	Lump Sum		
20	33 05 06	Culvert with Flap Gate	3	Each		
21	33 05 06	Culvert with Control Gate	1	Each		
North Logan Wetland Mitigation Area Total Bid (\$): _____						

Hyde Park Wetland Mitigation Area Bid						
Item No.	Classification of Work		QTY	Unit	Unit Price	TOTAL Cost
1	01 57 00	Temporary Controls Create and Implement Storm Water Pollution Prevention Plan (SWPPP)	1	Lump Sum		
2	01 71 13	Mobilization and Demobilization (10%)	1	Lump Sum		
3	01 71 23	Construction Layout	1	Lump Sum		
4	01 57 00	Stabilized Construction Entrance.	1,000	Square Feet		
5	01 57 00	Silt Fence	800	Linear Feet		
6	06 61 00	Rail Fence	920	Linear Feet		
7	31 05 13	Common Fill. Includes borrow from on-site excavation	4,900	Cubic Yard		
8	31 11 00	Site Clearing. Clear and Grub.	16,000	Square Yard		
9	31 23 16	Strip, Stockpile and Spread Topsoil	16,000	Square Yard		
10	31 23 16	Strip, Stockpile and Spread Topsoil in farm field Landscape Grading areas.	27,540	Square Yard		
11	31 23 16	Excavation. Cut (Cut 11100 CY minus Fill 4900 = CY)	6,200	Cubic Yard		
12	32 91 19	Landscape Grading. Includes placing backfill material on farm field.	6,200	Cubic Yard		
13	32 92 00	Turf and Grass. Supply and install WETLAND FRINGE SEED MIX and hydro mulch.	0.1	Acre		
14	32 92 00	Turf and Grass. Supply and install EMERGENT WETLAND SEED MIX and hydro mulch.	1.4	Acre		
15	32 92 00	Turf and Grass. Supply and install UPLAND SEED MIX and hydro mulch.	1.1	Acre		
16	32 93 13	Ground Cover. Supply and install shrubs (40 cu in).	850	Each		
17	32 93 43	Tree. Supply and Install trees (5 gal).	250	Each		
18	32 93 43	Supply and Install Wire Cage at Populus tree species	100	Each		
19	32 01 90	Maintenance of Planting. Includes water, weed, repair and protect installed plantings until work is accepted.	1	Lump Sum		
20	33 05 06	Culvert with Flap Gate	2	Each		
Hyde Park Wetland Mitigation Area Total Bid (\$): _____						

Signature of Preparer: _____

MEASUREMENT AND PAYMENT

BID SCHEDULE

Item No. 1 : Create and Implement Storm Water Pollution Prevention Plan (SWPPP):

This item includes implementation of construction site stormwater erosion control and best management practices (BMPs). Erosion control measures will be maintained and remain in place until re-vegetation success measures as identified by the Owner's Representative have been achieved. Monitor, inspect, and maintain all erosion control measures as needed to prevent erosion and sediment discharge from the site. Adjust locations of measures and install additional measures as construction phasing requires. Disturbed areas where construction activity has ceased will be stabilized in accordance with State UPDES requirements. Submittal of NOI and acquisition of UPDES Storm Water General Permit for Construction Activities (UTR300000) is the responsibility of the Contractor. This item shall be measured and paid for on a lump sum basis.

Item No. 2 : Mobilization and Demobilization: This item includes mobilization of equipment, contractor coordination and project management, and obtaining permits for the work. The amount bid or identified in a schedule of values for Mobilization shall not exceed 10% of the total contract bid amount. The following payment schedule percentages shall be based on amount bid or identified in a schedule of values for Mobilization up to a maximum of 10% of the total contract bid. Any portion of the mobilization bid amount which exceeds 10% of the total contract bid amount, will be paid to the Contractor after final acceptance of the Work, with the last mobilization payment (see "overage amount" in the payment schedule table below). Partial payments for Mobilization will be made in accordance with the payment schedule table below.

MOBILIZATION PAYMENT SCHEDULE

Payment	Amount	When Paid
1ST	25% of mobilization	With first partial payment after 3% of the original contract amount earned by the Contractor.
2ND	25% of mobilization	When amount earned by Contractor is 10% of the original contract price.
3RD	25% of mobilization	When amount earned by Contractor is 50% of the original contract price.
4TH (last)	25% of mobilization + "overage amount"	When project is complete and accepted.

Item No. 3 : Construction Layout Survey: This item includes the layout of the construction survey. Survey staking is the responsibility of the Contractor. The Contractor may obtain CAD files from the Preparer for staking and layout purposes. The Contractor is responsible to set the baseline survey control grade and confirm it with the Owner's Representative. This item shall be measured and paid for on a lump sum basis.

Item No. 4 : Construct Stabilized Construction Entrance: The unit price to be paid for

this item shall be considered compensation in full for all labor, materials, and equipment necessary for furnishing, hauling, compacting, placing, and removing the temporary filter fabric and stone material in accordance to the measurements and depth as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per square feet of imported, placed basis.

Item No. 5 : Construct Silt Fence: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to furnish and place, and remove the temporary silt fence as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per linear feet of material placed.

Item No. 6 : Install Rail Fence: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to construct the wood rail fence as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per linear feet basis.

Item No. 7 : Construct to Grade Common Fill Native Borrow: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to haul, place, and compact common fill as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per cubic yard borrow hauled, placed, and compacted. This item shall be measured and paid for on a per cubic yard basis.

Item No. 8 : Site Clearing: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment necessary to perform site clearing as shown on the Construction Plans and according to APWA Standards and Specifications. Existing topsoil shall be excavated and salvaged by Contractor for use in landscaping and grading activities. This item shall be measured and paid for on a per square yard basis.

Item No. 9 : Strip, Stockpile, and Spread Topsoil: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment necessary to meet finish grade design as shown on the Construction Plans and according to APWA Standards and Specifications. Existing topsoil shall be excavated and salvaged by Contractor for use in landscaping and grading activities. This item shall be measured and paid for on a per square yard basis.

Item No. 10 : Strip, Stockpile, and Spread Topsoil in Farm Field Landscape Grading Areas: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment necessary to place topsoil as shown on the Construction Plans. Existing topsoil shall be excavated and salvaged by Contractor for use in farm field grading activities. This item shall be measured and paid for on a per square yard basis.

Item No. 11 : Excavation for Wetland and Landscape Areas: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment necessary to meet grade design identified for the wetland and landscape areas as shown on the Construction Plans and according to APWA Standards and Specifications. Existing topsoil shall be excavated and salvaged by Contractor for use in landscaping and grading activities. This item

shall be measured and paid for on a per cubic yard basis.

Item No. 12 : Landscape Grading in Farm Field Areas: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to place excavated material as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per cubic yard basis.

Item No. 13 : Install Wetland Fringe Seed Mix and Hydromulch: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to place native seed and hydromulch as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per acre basis.

Item No. 14 : Install Emergent Wetland Seed Mix and Hydromulch: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to place native seed and hydromulch as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per acre basis.

Item No. 15 : Install Upland Seed Mix and Hydromulch: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to place native seed and hydromulch as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per acre basis.

Item No. 16 : Install Shrub: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to install shrubs as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per each basis.

Item No. 17 : Install Tree: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to install trees as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per each basis.

Item No. 18 : Install Tree Wire Cage: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to install tree wire cages at all populus tree species as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per each basis.

Item No. 19 : Maintenance of Planting: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to maintain, water, weed, repair, and protect installed plantings until work is accepted according to APWA Standards and Specifications. Planting areas will be accepted not less than 60 days after planting and successful growth. This item shall be measured and paid for on a lump sum basis.

Item No. 20 : Install Culvert with Flap Gate: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to install culvert with flap gate as shown on the Construction Plans and according to APWA Standards

and Specifications. This item shall be measured and paid for on a per each basis.

Item No. 21: Install Culvert with Control Gate: The unit price to be paid for this item shall be considered compensation in full for all labor, materials, and equipment required to install culvert with control gate as shown on the Construction Plans and according to APWA Standards and Specifications. This item shall be measured and paid for on a per each basis.

BID BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, hereinafter referred to as the "Principal," and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto NORTH LOGAN CITY AND HYDE PARK CITY, hereinafter referred to as the "Obligee," in the amount of \$ _____ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the _____ Project.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to NORTH LOGAN CITY AND HYDE PARK CITY as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety under this Bond shall be for a term of sixty (60) days from the actual date of the bid opening.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

DATED this _____ day of _____, 2026.

Principal's name and address (if other than a corporation):

Principal's name and address (if a corporation):

By: _____

By: _____

Title: _____

Title: _____
(Affix Corporate Seal)

Surety's name and address:

STATE OF _____)

) ss.

COUNTY OF _____)

By: _____
Attorney-in-Fact (Affix Corporate Seal)

On this _____ day of _____, 2026, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 2026.

My Commission Expires: _____

Resides at: _____

APPROVED AS TO FORM:

February 11, 1991,

by ALAN S. BACHMAN, ASST ATTORNEY GENERAL

NOTARY PUBLIC

NOTICE OF AWARD

CUB RIVER WETLAND MITIGATION SITE PROJECT

Owner: **NORTH LOGAN CITY AND HYDE PARK CITY**

Bidder:

Bidders Address:

You are notified that your Bid dated _____, **2026** for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for **Cub River Wetland Mitigation Site Project**.

The Contract Price of your Contract is

Dollars and 0/100.

Dollars (\$_____).

You must comply with the following conditions precedent within **10** days of the date you receive this Notice of Award.

1. Deliver to the Owner **3** fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security Bonds as specified in the Instructions to Bidders (Article 3), General Conditions (Article 11.3), and EDA Contracting Provisions for Construction Projects (Section 14).

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

NORTH LOGAN CITY AND HYDE PARK CITY

Owner

By: _____
Authorized Signature

Title

Date

CONTRACTOR'S AGREEMENT

FOR: **CUB RIVER WETLAND MITIGATION SITE PROJECT**

THIS, made and entered into this _____, by and between NORTH LOGAN CITY AND HYDE PARK CITY, hereinafter referred to as "OWNER" and _____

in, and authorized to do business in the State of Utah, hereinafter referred to as "Contractor", whose address is: _____.

WITNESSETH: WHEREAS, Owner intends to have Work performed to improve and upgrade its property in accordance with the **CUB RIVER WETLAND MITIGATION SITE PROJECT** construction documents.

WHEREAS, Contractor agrees to perform the Work for the sum stated herein.

The project generally includes the construction of wetland emergent marsh, woody riparian, and pond areas; a flood control berm; culverts with flap gates; a culvert with control gate; a rail fence; landscape seeding; landscape shrub and tree planting; and placing fill material in farm field areas.

NOW, THEREFORE, Owner and Contractor for the consideration provided in this Contractor's Agreement, agree as follows:

ARTICLE 1. SCOPE OF WORK. The Work to be performed shall be in accordance with the Contract Documents prepared by BIO-WEST, Inc., for the said project.

All terms used in this Contractor's Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions.

The Contractor Agrees to furnish labor, materials, and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of Owner or its authorized representative. The relationship of the Contractor to the Owner hereunder is that of an independent Contractor.

ARTICLE 2. CONTRACT SUM. The Owner agrees to pay and the Contractor agrees to accept in full performance of this Contractor's Agreement, the sum of _____, which is the base bid and which sum also includes the cost of a 100 % Performance Bond and a 100 % Payment Bond as well as all insurance requirements of the Contractor. **Said bonds have already been posted by the Contractor pursuant to State law.** The required proof of insurance certificates have been delivered to Owner in accordance with the General Conditions **before** the execution of this Contractor's Agreement.

ARTICLE 3. TIME OF COMPLETION AND DELAY REMEDY. The Work shall be **Substantially Complete within three hundred sixty five (365) calendar days** after the date of the Notice to Proceed. Contractor agrees to pay liquidated damages in the amount of **\$ 150.00 per day** for each day after expiration of the Contract Time until the Contractor achieves Substantial Completion in accordance with the Contract Documents, if Contractor's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the Owner for delay only; (b) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the Owner from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No action shall be maintained by the Contractor or Subcontractor at any tier, against the Owner for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever,

including acts and omissions of the Owner or its officers, employees or agents, except as provided in Article 8 of the General Conditions. The Contractor may receive an extension of time in which to complete the Work under this Contractor's Agreement, as provided in Article 8 of the General Conditions.

ARTICLE 4. CONTRACT DOCUMENTS. The Contract Documents consist of this Contractor's Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, Specifications, and Addenda and Modifications. The Contract Documents shall also include the Bid Schedule submitted by the Contractor, to the extent not in conflict therewith.

All such documents are hereby incorporated by reference herein. Any reference in this Contractor's Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

ARTICLE 5. PAYMENT. The Owner agrees to pay the Contractor from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the Owners Representative, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The Contractor agrees to furnish to the Owner invoices for materials purchased and on the site but not installed, for which the Contractor requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the Owner may reasonably require shall be supplied by the Contractor at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without Owner's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment.

ARTICLE 6. INDEBTEDNESS. Before final payment is made, the Contractor must submit evidence satisfactory to the Owner that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been paid or that arrangements have been made for such payment. Final Payment will be made without unnecessary delay after receipt of said evidence and final acceptance of the Work by the Owner.

Contractor shall respond immediately to any inquiry in writing by the Owner as to any concern of financial responsibility and Owner reserves the right to request any waivers or releases from Contractor in regard to any rights of Subcontractors at any tier or any third parties prior to any payment by Owner to Contractor.

ARTICLE 7. ADDITIONAL WORK. It is understood and agreed by the parties hereto that no money will be paid to the Contractor for additional labor or materials furnished unless a new contract in writing or a Modification hereof for such additional labor or materials has been executed. The Owner specifically reserves the right to modify or amend this Contractor's Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work.

ARTICLE 8. INSPECTIONS. The Work shall be inspected for acceptance in accordance with Article 9 of the General Conditions.

ARTICLE 9. DISPUTES. If disputes arise regarding the value of any Work performed, or any Work omitted, or of any extra Work which the Contractor may be required to perform, or respecting any other elements involved in this Contractor's Agreement, said dispute shall be resolved in accordance with Article 4 of the General Conditions.

ARTICLE 10. TERMINATION. This Contractor's Agreement may be terminated in accordance with Article 14 of the General Conditions.

ARTICLE 11. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE USE THEREOF. The Owner may withhold from payment to the Contractor such amount as, in Owner's judgment, may be necessary to pay just claims against the Contractor or Subcontractor at any tier for labor and services rendered and materials furnished in and about the Work. The Owner may apply such withheld

amounts for the payment of such claims in Owner's discretion. In so doing, the Owner shall be deemed the agent of Contractor and payment so made by the Owner shall be considered as payment made under this Contractor's Agreement by the Owner to the Contractor. Owner shall not be liable to the Contractor for any such payment made in good faith. Such payments may be made without prior determination of the claim or claims.

ARTICLE 12. INDEMNIFICATION. The Contractor shall comply with Subparagraph 3.14, "Indemnification", of the General Conditions.

ARTICLE 13. ASSIGNMENT OF CONTRACT. The Contractor shall not assign the Contract without the prior written consent of the Owner, nor shall the Contractor assign any moneys due or to become due as well as any rights under the Contract, without prior written consent of the Owner.

The Contractor and Owner for themselves, their heirs, successors, executors, and administrators, whichever may be applicable, hereby agree to the full performance of the Contract Documents.

ARTICLE 14. RELATIONSHIP OF THE PARTIES. The Contractor accepts the relationship of trust and confidence established by this Contractor's Agreement and covenants with the Owner to cooperate with the Owners Representative and utilize the Contractor's best skill, efforts and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of the Owner.

The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best and most expeditious manner by furnishing and approving in a timely way, information required by the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 15. AUTHORITY TO EXECUTE AND PERFORM AGREEMENT. Contractor and Owner each represent that the execution of this Contractor's Agreement and the performance thereunder is within their respective duly authorized powers.

ARTICLE 16. ATTORNEY FEES AND COSTS. The prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this Contractor's Agreement or recover damages or any other action as a result of a breach thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contractor's Agreement on the day and year stated herein above.

ATTEST: (SEAL)

CONTRACTOR:

Secretary of Corporation

Signature

Date

Please type/write name clearly

Title:

Please type/write name clearly

NORTH LOGAN CITY

HYDE PARK CITY

PERFORMANCE BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

That _____ hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto **NORTH LOGAN CITY AND HYDE PARK CITY**, hereinafter referred to as the "Obligee," in the amount of _____ DOLLARS (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 2026 in the County of _____, State of Utah, Project No. _____, for the approximate sum of _____ Dollars (\$ _____), which Contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____ 2026.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____ (Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____ (Seal)
Attorney-in-Fact

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2026, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 2026.

My commission expires: _____
Resides at: _____

NOTARY PUBLIC

APPROVED AS TO FORM:
February 11, 1991
ALAN S. BACHMAN,
ASSISTANT ATTORNEY GENERAL

PAYMENT BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____, a corporation organized and existing under the laws of the State of _____ authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of _____, hereinafter referred to as the "Surety," are held and firmly bound unto **NORTH LOGAN CITY AND HYDE PARK CITY**, hereinafter referred to as the "Obligee," in the amount of \$ _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 2026, to construct _____ in the County of _____, State of Utah, Project No. _____ for the approximate sum of _____ Dollars (\$ _____), which contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, 1953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 2026.

WITNESS OR ATTESTATION:

PRINCIPAL:

By: _____ (Seal)

Title: _____

WITNESS OR ATTESTATION:

SURETY:

By: _____ (Seal)
Attorney-in-Fact

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2026, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 2026.

NOTARY PUBLIC

My commission expires: _____
Resides at: _____

APPROVED AS TO FORM:
February 11, 1991 ALAN S. BACHMAN
ASSISTANT ATTORNEY GENERAL

NOTICE TO PROCEED

CUB RIVER WETLAND MITIGATION SITE PROJECT

Date: _____

To: _____

You are hereby notified to commence work in accordance with the Contractor's Agreement entered into on _____, on or before, _____, and you are to complete the work within ____consecutive calendar days thereafter. The date of substantial completion of all work is therefore _____.

NORTH LOGAN CITY AND HYDE PARK CITY

by _____

Title _____

by _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice to
Proceed is hereby acknowledged by

This ____ day of _____ 2026.

by _____

Title _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

CUB RIVER WETLAND MITIGATION SITE PROJECT

Owner: NORTH LOGAN CITY AND HYDE PARK CITY

Date of Preliminary Inspection: _____

Date of Substantial Completion: _____

Work for Which This Certificate of Substantial Completion Applies (All Work / Specified Portions): _____

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Owners Representative, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

☐ Amended Responsibilities

☐ Not Amended

OWNER's Amended Responsibilities:

CONTRACTOR's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

GENERAL CONDITIONS

ARTICLE 1. GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

ADDENDA. "Addenda" means the written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

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

BONDS. "Bonds" mean the bid bond, performance and payment bonds and other instruments of security.

CHANGE ORDER. "Change Order" means a written instrument prepared by the Owner's Representative and signed by the Owner, Contractor and Owner's Representative, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any; and (3) the extent of the adjustment in the Contract Time, if any.

CLAIM. "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, Modification, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

CONSTRUCTION CHANGE DIRECTIVE. A "Construction Change Directive" means a written order recommended by the Owner's Representative, prepared by the Owner's Representative, and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions; the Contract Sum and Contract Time being adjusted accordingly.

CONTRACT. The Contract Documents form the Contract for Construction. The term "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner's Representative and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Owner's Representative shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Owner's Representative's duties.

CONTRACT DOCUMENTS. The term "Contract Documents" means the Contractor's Agreement between the Owner and Contractor (hereinafter referred to as "Contractor's Agreement"), the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, Specifications, Addenda, other documents listed in the Contractor's Agreement and Modifications issued after execution of the Contractor's Agreement. The Contract Documents shall also include the bidding documents, including the Instructions to Bidders, Notice to Contractors and the Proposal, to the extent not in conflict with the other above-stated Contract Documents.

CONTRACT SUM. The term "Contract Sum" means the Contract Sum as stated in the Contractor's Agreement and, including authorized adjustments (modifications), is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

CONTRACT TIME. "Contract Time", unless otherwise provided in the Contract Documents, means the period of time, including authorized adjustments (modifications), allotted in the Contract Documents for Substantial Completion of the Work.

CONTRACTOR. The Contractor is the person or entity identified as such in the Contractor's Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the

Contractor or the Contractor's authorized representative. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case, shall mean the Contractor who executes each separate Owner-Contractor Agreement.

DAY. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

DEFECTIVE. "Defective" is an adjective which when modifying the word "Work" refers to Work that is unsatisfactory, faulty 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 Owner's Representative's recommendation of final payment, unless responsibility for the correction thereof has been assumed in writing by the Owner.

DRAWINGS. The "Drawings" are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, and generally include the drawings, elevations, sections, details, schedules and diagrams.

FIELD ORDER. "Field Order" means a written order issued by the Owner's Representative which orders minor changes in the Work in accordance with Article 7 but which does not involve a change in the Contract Price or the Contract Time.

MODIFICATION. A "Modification" is (1) a Change Order (2) Construction Change Directive or (3) Field Order. The Contract may be amended or modified only by a Modification or other written amendment executed by both the Owner and Contractor.

NOTICE TO PROCEED. A "Notice to Proceed" is a document prepared by the Owner and sent to the Contractor, and by its terms authorizes the Contractor to commence Work on the Project. It is deemed issued upon being sent by the Owner to the Contractor's last known address.

OWNER. "Owner" or pronoun used in place thereof, means NORTH LOGAN CITY AND HYDE PARK CITY. The Owner is referred to throughout the Contract Documents as if singular in number.

OWNER'S REPRESENTATIVE (including multiple design professionals). "Owner's Representative" means the person lawfully licensed to practice, or an entity lawfully practicing as identified as such in the Design Professional Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner's Representative" also means the Owner's Representative's representative and consultants. When these General Conditions are part of a Contract in which the design professional is an Engineer, Interior Designer, Landscape Architect or other design professional, the term "Owner's Representative" as used in these General Conditions shall be deemed to refer to such design professional. A license is not required when the type of design professional is one which is not subject to a professional license, but such professional must meet the prevailing standards in the State of Utah for such practice.

PARTIAL UTILIZATION. "Partial Utilization" means 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.

PRODUCT DATA. "Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

PROJECT. The "Project" means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include the construction by the Owner or by separate contractors.

PROJECT MANUAL (FOR CONSTRUCTION). The "Project Manual" is the volume assembled for the Work and may include the bidding requirements, sample forms, General or Supplementary Conditions of the Contract and Specifications.

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

SHOP DRAWINGS. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

SUBCONTRACTOR. "Subcontractor" means the person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

SUBSTANTIAL COMPLETION. "Substantial Completion" is the date certified by the Owner's Representative in accordance with Paragraph 9.6 and generally means the date the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. A Certificate of Occupancy, where applicable, shall be required to be issued in order for the Work to be considered Substantially Complete unless the failure or unreasonable delay of such issuance is beyond the control of the Contractor. Notwithstanding the above, an unreasonably high number of punchlist items, shall result in a determination that Substantial Completion has not occurred.

SUB-SUBCONTRACTOR. A "Sub-subcontractor" means the person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" does not include the sub-subcontractors of a subcontractor for a separate contractor. Unless the context requires otherwise, the term Sub-subcontractor includes all material suppliers.

SUPPLEMENTARY CONDITIONS OR SUPPLEMENTARY GENERAL CONDITIONS. "Supplementary Conditions" or "Supplementary General Conditions" means the part of the Contract Documents which amends or supplements these General Conditions.

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

1.2 CONSTRUCTION OF CONTRACT DOCUMENTS, VENUE

1.2.1 APPLICABLE LAWS. The applicable laws and regulations of the State of Utah, as well as any applicable local laws and regulations not superseded by State law, shall govern the execution of the Work embodied in the Contract Documents as well as the interpretation of the Contract Documents.

1.2.2 CAPITALIZATION. Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the title of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of documents published by the American Institute of Engineering.

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

1.2.4 VENUE. In case of any dispute which may arise under the Contract Documents, the place of venue shall be in the County of Cache, unless otherwise agreed to by all the parties.

1.2.5 INTENT AND HIERARCHY. The Contract Documents should be read as a whole and wherever possible, the provisions should be construed in order that all provisions are operable. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one Document or provisions thereof shall be as binding as if required by all the Documents or provisions thereof. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from the Contract Documents as being necessary to produce the intended results. In case of an irreconcilable conflict between provisions within a Contract Document or between Contract Documents, the following priorities shall govern as listed below:

- (1) A particular Modification shall govern over all Contract Document provisions or Modifications issued prior to said particular Modification.
- (2) A particular Addendum shall govern over all other Contract Document provisions issued prior to said particular Addendum. Subsequent Addenda shall govern over prior Addenda.
- (3) The Supplementary General Conditions shall govern over these General Conditions.
- (4) These General Conditions shall govern over all other Contract Documents except for the Supplementary General Conditions, Addenda and Modifications.

1.2.6 CONFLICT RESPONSIBILITY. The Contractor shall comply with the provisions of Subparagraph 3.1.1 hereinbelow regarding the reviewing of the Contract Documents and field conditions by the Contractor.

1.2.7 SEPARABILITY. The invalidity of any part, paragraph, subparagraph, phrase, provision or aspect of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents.

1.2.8 DIVIDING WORK AND CONTRACTOR REPRESENTATION. Organization of the specifications into division, sections and articles, and arrangement of Drawings, shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations.

1.2.9 CONSTRUCTION OF WORDS. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings shall be construed as having such recognized meanings. Unless the context requires otherwise, all other technical words shall be construed in accordance with the meaning normally established by the particular, applicable profession or industry. All other words, unless the context requires otherwise, shall be construed with an ordinary, plain meaning.

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 IN GENERAL. All Drawings, Specifications and other documents prepared by the Engineer are and shall remain the property of the Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. Said documents were prepared and are intended for use as an integrated set for the Project which is the subject of this Contractor's Agreement. They shall not be modified or used on any other project without the prior written consent of the Owner and Engineer. Any such nonpermissive use or modification, by Contractor, the Contractor's Subcontractors at any tier or anyone for whose acts the Contractor is liable, shall be at Contractor's sole risk. Contractor shall hold harmless and indemnify the Owner from and against any and all claims, actions, suits, costs, damages, loss, expenses and attorney fees arising out of such nonpermissive use or modification by the Contractor. The Contractor, Subcontractors and Sub-subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Engineer or Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Engineer or Architect. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

ARTICLE 2. OWNER**2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER.**

2.1.1 PROJECT COORDINATOR. The Owner shall designate a Project Coordinator authorized to act in the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions within a reasonable time pertaining to documents submitted by the Owner's Representative and/or Contractor in order to avoid a compensable delay in the orderly and sequential progress of the Project.

2.1.2 SPECIALISTS AND INSPECTORS. The Owner may assign an inspector or specialist to note deviations from, or necessary adjustments to, the Contract Documents or to report deficiencies or defects in the Work. The inspector or specialist's activities in no way relieves the Owner's Representative or Contractor of the responsibilities set forth in the Contract Documents or the Owner's Representative's Agreement.

2.1.3 SURVEYS AND LEGAL DESCRIPTION. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall review this information, including the surveys and any provided soils tests, and compare such information with observable physical conditions and the Contract Documents.

2.1.4 PROMPT INFORMATION AND SERVICES. Upon receipt of a written request from the Contractor, information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.1.5 COPIES OF DRAWINGS AND PROJECT MANUALS (FOR CONSTRUCTION). Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals (for construction) as are reasonably necessary for execution of the Work.

2.1.6 OTHER DUTIES. The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

ARTICLE 3. CONTRACTOR**3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

3.1.1 REVIEWING CONTRACT DOCUMENTS, INFORMATION, REPORTING ERRORS, INCONSISTENCIES OR OMISSIONS. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Paragraph 2.1 hereinabove and shall at once report to the Owner's Representative errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Owner's Representative for damage resulting from errors, inconsistencies or omission in the Contract Documents, unless the Contractor recognized such error, inconsistency or omission or a Contractor of ordinary skill and expertise for the type of Work involved would have readily so recognized such error, inconsistency or omission, and the Contractor failed to report such to the Owner's Representative. If the Contractor performs any construction activity without such notice to the Owner's Representative and resolution of the error, inconsistency or omission, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.1.2 FIELD CONDITIONS. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor, or information which a Contractor of ordinary skill and expertise for the type of Work involved would have known, before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner's Representative at once. If the Contractor performs any construction activity without such notice to the Owner's Representative and resolution of the error, inconsistency or omission, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.1.3 PERFORM IN ACCORDANCE WITH DOCUMENTS AND SUBMITTALS. The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.10 hereinbelow.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 SUPERVISION AND CONTROL. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, except to the extent that the Contract Documents expressly and specifically state otherwise.

3.2.2 RESPONSIBILITY. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.2.3 NOT RELIEVED OF OBLIGATIONS. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner's Representative in the Owner's Representative's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2.4 INSPECTIONS AND APPROVALS.

- (1) The Contractor shall be responsible for requesting inspections of portions of the Work under the Contract Documents to determine whether such portions are in proper condition to receive subsequent Work.
- (2) If any of the Work is required to be inspected or approved by any public authority, the Contractor shall request such inspection or approval to be performed. Any inspection or failure to inspect shall not constitute a waiver of any of the Contractor's obligations. Any inspection or failure to inspect shall not be construed as an approval or acceptance of the Work or any part thereof.

3.3 LABOR AND MATERIALS.

3.3.1 PAYMENT BY CONTRACTOR. Except to the extent it is otherwise stated in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipments, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 DISCIPLINE AND COMPETENCE. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons performing under the Contract Documents. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4 WARRANTY.

3.4.1 IN GENERAL. In addition to the provisions of Paragraph 12.2 hereinbelow, the following warranties shall apply: (1) The Contractor warrants to the Owner and Owner's Representative that materials and equipment furnished under the Contract will be of good quality and new, except to the extent otherwise required or expressly permitted by the Contract Documents. (2) The Contractor also warrants to the Owner and Owner's Representative that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to said requirements, including substitutions not properly approved and authorized, may be considered defective at the Owner's option.

3.4.2 EXCLUSION. Unless due to the negligent or intentional act or omission of the Contractor or those under the Contractor's control, or as otherwise stated in the Contract Documents, the Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

3.4.3 FURNISH EVIDENCE ON REQUEST. If requested by the Owner's Representative or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5 TAXES AND OTHER PAYMENTS TO GOVERNMENT.

The Contractor shall pay sales, consumer, use, employment-related and similar taxes related to the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6 PERMITS, FEES, NOTICES, LABOR AND MATERIALS.

3.6.1 PERMITS AND FEES.

- (1) Unless required in the Supplementary General Conditions, it will not be necessary for the Contractor to obtain or pay for local building permits, plan check fees, electrical or plumbing permits, nor will it be necessary to pay fees for inspections pertaining thereto.
- (2) When required by the Contract Documents, the Contractor shall secure and pay for the building permits and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required, or the likely enactment thereof is known, when bids are received or negotiations concluded.

3.6.2 COMPLIANCE WITH PUBLIC AUTHORITIES, NOTICES. The Contractor shall comply with and give notices required by laws, ordinances, resolutions, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.

3.6.3 CORRELATION OF CONTRACT DOCUMENTS AND ENACTMENTS. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, resolutions, building codes, and rules and regulations. However, if the Contractor observes, or if such is readily observable to a Contractor of ordinary skill and expertise for the type of Work involved, that a portion of the Contract Documents is at variance therewith, the Contractor shall promptly notify the Owner's Representative and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.6.4 FAILURE TO GIVE NOTICE. If the Contractor, any of its Subcontractors or any Sub-subcontractor thereof performs Work without complying with the requirements of Paragraph 3.6.3 hereinabove, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.7 SUPERINTENDENT.

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

3.8 CONTRACTOR'S CONSTRUCTION SCHEDULES.

3.8.1 IN GENERAL. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Owner's Representative's comment a detailed Contractor's construction schedule for the Work. The schedule shall not exceed the Contract Time. Said schedule shall be updated as requested by Owner, but in no event more than once a month, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Said schedule shall clearly identify the critical path of Project activities noting those activities which are on the critical path. If Owner is required, by the Contract Documents, to furnish any materials, equipment, or the like, to be incorporated into the Work by the Contractor, Contractor shall submit, with the initial schedule submittal, a letter clearly indicating the dates that such items are required at the Project Site.

3.8.2 SCHEDULE OF SUBMITTALS. The Contractor shall prepare and keep current, for the Owner's Representative's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Owner's Representative a reasonable time to review the submittals.

3.8.3 COMPLIANCE WITH SCHEDULES. The Contractor shall comply with the most recent schedules.

3.9 DOCUMENTS AND SAMPLES AT THE SITE, CERTIFYING "AS-BUILTS"

The Contractor shall maintain at the site for the Owner, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked weekly to record changes and selections made during construction, as well as approved Shop Drawings, Product Data, Samples and similar submittals. These aforesaid items shall be available to the Owner's Representative and shall be delivered to the Owner's Representative for submittal to the Owner upon completion of the Work, signed by the Contractor, certifying that they show complete and exact "as-built" conditions, stating sizes, kind of materials, vital piping, conduit locations and similar matters.

3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.10.1 NOT CONTRACT DOCUMENTS. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.10.2 PROMPTNESS. The Contractor shall review, approve and submit to the Owner's Representative, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

3.10.3 NOT PERFORM UNTIL OWNER'S REPRESENTATIVE APPROVES. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the Owner's Representative. Such Work shall be in accordance with approved submittals.

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

3.10.5 CONTRACTOR'S LIABILITY. The Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner's Representative in writing of such deviation at the time of the submittal and the Owner's Representative has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's Representative's review and comment.

3.10.6 DIRECT SPECIFIC ATTENTION TO REVISIONS. The Contractor shall direct specific attention in writing to all revisions on resubmitted Shop Drawings, Product Data, Samples or similar submittals, except those requested by the Owner's Representative and indicated on previous submittals.

3.10.7 INFORMATIONAL SUBMITTALS. Informational submittals upon which the Owner's Representative is not expected to take responsive action may be so identified in the Contract Documents.

3.10.8 RELIANCE ON PROFESSIONAL CERTIFICATION. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner and Owner's Representative shall be entitled to rely upon the accuracy and completeness of such calculations and certifications. If a professional stamp is required, the professional shall be licensed in the State of Utah unless

otherwise approved by the Owner in writing. Likewise, the Contractor is entitled to rely upon the accuracy and completeness of the calculations made by the Owner's Representative in developing the Contract Documents, unless a Contractor of ordinary skill and expertise for the type of Work involved would know that such is inaccurate or incomplete.

3.11 USE OF SITE.

3.11.1 IN GENERAL. The Contractor shall confine operations at the site to areas permitted by the Contract Documents, law, ordinances, resolutions, rules and regulations, and permits and shall not unreasonably encumber the site with materials or equipment.

3.11.2 ACCESS. The Contractor shall not, except as provided in the Contract Documents or with the Owner's advance written consent when necessary to perform the Work, interfere with access to properties neighboring the Project site by the owners of such properties and their respective tenants, agents, invitees and guests.

3.12 ACCESS TO WORK.

The Contractor shall provide the Owner and Owner's Representative access to the Work in preparation and progress, wherever located.

3.13 ROYALTIES AND PATENTS.

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Owner's Representative harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner's Representative.

3.14 INDEMNIFICATION.

3.14.1 IN GENERAL.

- (1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to as "indemnitees") from and against every kind and character of claims, damages, losses and expenses, including but not limited to attorneys' fees, and including those events covered under the blanket Contractual Liability Coverage required under the Contract Documents, arising out of or resulting from any act or omission in the performance of the Work including the work of all the Subcontractors, Sub-subcontractors and their employees, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent or intentional act or omission of the Contractor, any Subcontractor or Sub-subcontractor, or anyone directly or indirectly employed or the agent of any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the Owner shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder.
- (2) Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under the Contract Documents.
- (3) In claims against any person or entity indemnified under this Paragraph 3.14 by an employee of the Contractor, Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.14 shall not be limited by a limitation on amount or type of damages, compensation or benefits

payable by or for the Contractor, Subcontractor or a Sub-subcontractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1 OWNER'S REPRESENTATIVE.

4.1.1 DUTIES, RESPONSIBILITIES, LIMITATIONS. Duties, responsibilities and limitations of authority of the Owner's Representative as set forth in the Contract Documents shall not be restricted, modified or extended without the written consent of the Owner, Contractor and Owner's Representative. Consent shall not be unreasonably withheld by any party.

4.2 OWNER'S REPRESENTATIVE'S ADMINISTRATION OF THE CONTRACT.

4.2.1 IN GENERAL. The Owner's Representative shall provide the administration of the Contract as described in the Contract Documents, and will be the Owner's Representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Owner's Representative will advise and consult with the Owner. The Owner's Representative shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents or Owner's Representative's Agreement.

4.2.2 SITE VISITS.

- (1) **IN GENERAL.** The Owner's Representative shall visit the site weekly or at intervals appropriate to the stage of construction to become familiar in general with the progress and quality of the Work completed and to determine if the Work is proceeding in general accordance with all the requirements and the overall design concept of the Contract Documents as well as all applicable laws, statutes, ordinances, resolutions, codes, rules, regulations, orders and decrees. The Owner's Representative's periodic site visits shall in no way limit or effect the Contractor's responsibility to comply with all the requirements and the overall design concept of the Contract Documents as well as all applicable laws, statutes, ordinances, resolutions, codes, rules, regulations, orders and decrees.
- (2) **WRITTEN REPORT.** The Owner's Representative shall promptly submit to the Owner a written report subsequent to each site visit.
- (3) **INSPECTIONS LIMITATION.** The Owner's Representative shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work unless specified in the Owner's Representative's Agreement.

4.2.3 STANDARD OF CARE. The Owner's Representative shall exercise due care and diligence in discovering and promptly reporting to the Owner any defect or deficiencies in the Work of the Contractor or any of its Subcontractors, or their agents or employees, or any other person or entity performing any of the Work in the construction of the Project. Any defective Drawings, Specifications or other Contract Documents furnished by the Owner's Representative shall be promptly corrected by the Owner's Representative at no cost to the Owner, and the Owner's Representative shall promptly reimburse the Owner for all damages, if any, resulting from the use of such defective Drawings, Specifications or other Contract Documents. The Owner's approval, acceptance, use of or payment for all or any part of the Owner's Representative's services under the Owner's Representative's Agreement for this Project shall in no way affect the Owner's Representative's obligations or the Owner's rights thereunder.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Owner's Representative. Communications by and with the Owner's Representative's consultants shall be through the Owner's Representative. Communications by and with Subcontractors and Sub-subcontractors shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 OWNER'S REPRESENTATIVE ISSUE CERTIFICATES OF PAYMENTS. In accordance with Paragraph 9.3 of these General Conditions and based on the Owner's Representative's observations and evaluations of the Contractor's Applications for Payment, the Owner's Representative shall review and certify the amounts due the Contractor and shall issue Certificates of Payments in such amounts.

4.2.6 OWNER'S REPRESENTATIVE MAY REJECT WORK, ORDER INSPECTION, TESTS. The Owner's Representative shall have the responsibility and authority to reject Work which, based upon the Owner's Representative's knowledge or what may be reasonably inferred from the Owner's Representative's site observations and review of data, does not conform to the Contract Documents. Whenever the Owner's Representative considers it necessary or advisable for implementation of the intent of the Contract Documents, the Owner's Representative shall have the responsibility and authority to require additional inspections or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, provided, however, the Owner's Representative must obtain the Owner's prior written approval of any such additional inspections or testing. However, neither this authority of the Owner's Representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner's Representative to the Contractor, Subcontractors and Sub-subcontractors, their agents or employees or other persons performing portions of the Work, including separate contractors. If the Contractor disputes the rejection of any Work and the correction thereof shall involve additional cost or time, it shall be the Owner's option to accept such Work whether it be conforming or nonconforming.

4.2.7 OWNER'S REPRESENTATIVE REVIEW CONTRACTOR'S SUBMITTALS.

- (1) The Owner's Representative shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the purpose of checking for conformance with the information and design concepts expressed in the Contract Documents.
- (2) The Owner's Representative's action shall be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or of separate contractors while allowing sufficient time in the Owner's Representative's professional judgment to permit adequate review.
- (3) Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.
- (4) The Owner's Representative's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.2, 3.4 and 3.11 of these General Conditions.
- (5) The Owner's Representative's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner's Representative, of any construction means, methods, techniques, sequences or procedures.
- (6) The Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (7) When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Owner's Representative shall be entitled to rely upon such certifications to establish that the materials systems or equipment will meet the performance criteria required by the Contract Documents.

4.2.8 OWNER'S REPRESENTATIVE PREPARE CHANGE ORDERS, DIRECTIVES, AND FIELD ORDERS. The Owner's Representative shall prepare Change Orders and Construction Change Directives with specific documentation and data for the Owner's approval and execution in accordance with the Contract Documents, and may issue Field Orders not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

4.2.9 INSPECTIONS: SUBSTANTIAL AND FINAL.

- (1) **SUBSTANTIAL COMPLETION INSPECTION.** Promptly upon notification by the Contractor, the Owner's Representative shall conduct inspections to determine the date or dates of Substantial Completion and shall promptly initiate and process a Certificate of Substantial Completion with a punchlist of those items needed to be completed for final completion. The Owner's Representative shall receive and forward to the Owner with recommendations, in a timely manner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor. If the Owner's Representative determines that the Work is not Substantially Complete, then the Owner's Representative shall promptly issue a punchlist to the Contractor indicating the remaining items to be completed for Substantial and Final Completion.
- (2) **FINAL COMPLETION INSPECTION.** Promptly, upon notification by the Contractor, the Owner's Representative shall perform a final completion inspection and shall issue a final Certificate for Payment upon compliance with the requirements of the Substantial Completion inspection punchlist.
- (3) **INSPECTION DEFINED.** As used in this Paragraph 4.2.9, the word "inspection" or its derivatives shall mean a review of the Project, including but not limited to a visual review of the Work completed to date. It does not include or imply an exhaustive and/or detailed review of the Project, nor does it create a duty on the part of the Owner's Representative to detect latent defects. The Owner's Representative is responsible to report to the Owner all defects that the Owner's Representative discovered, or defects that an Owner's Representative of ordinary skill and expertise would have discovered, during the inspection.

4.2.10 OWNER'S REPRESENTATIVE'S ON-SITE REPRESENTATIVES. If the Owner and Owner's Representative agree, the Owner's Representative shall provide one or more project representatives at the site to assist in carrying out the Owner's Representative's responsibilities at the site.

4.2.11 OWNER'S REPRESENTATIVE'S DETERMINATION UPON WRITTEN REQUEST. The Owner's Representative shall decide Claims and disputes referred under 4.3.1 hereinbelow. The Owner's Representative may also be asked to render a written initial decision regarding any matters relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Owner's Representative's written decision shall be sent certified mail, return receipt requested, to the Owner and Contractor within a reasonable time, but in no case to exceed 15 days from the date the request is made.

4.2.12 CRITERIA FOR OWNER'S REPRESENTATIVE'S DETERMINATION FOR DECISIONS UNDER 4.2.11 AS WELL AS CLAIMS UNDER 4.3. Interpretations and decisions of the Owner's Representative under Subparagraph 4.2.11 above as well as 4.3 below shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Owner's Representative shall endeavor to secure faithful performance by both the Owner and the Contractor. The Owner's Representative shall endeavor to be fair and impartial to the Contractor and Owner. The Owner's Representative shall not be liable for the Owner's Representative's good faith participation in the dispute or claim resolution process or the results thereof except to the extent the Claim relates to an act or failure to act of the Owner's Representative, an alleged defect in the Contract Documents or design advice provided by the Owner's Representative.

4.2.13 OWNER'S REPRESENTATIVE'S DECISION ON AESTHETIC EFFECT. The Owner's Representative's decision on matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

4.2.14 PRODUCTS APPROVALS. Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the Contract Documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the Owner's Representative. Requests for and information pertaining to said approval must be submitted to the Owner's Representative no later than four (4) working days (not including Saturday, Sunday or State holidays) prior to the bid opening. The Owner's Representative's written approval will be

in an issued Addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the Owner's Representative.

4.3 CLAIMS AND DISPUTES.

4.3.1 DECISION OF OWNER'S REPRESENTATIVE.

- (1) Claims, including those alleging an error or omission by the Owner's Representative, shall be submitted in writing by the Contractor or Owner to the Owner's Representative for the initial determination in accordance with Paragraph 4.4 of these General Conditions. "Claims" are defined in Article 1 of these General Conditions. A copy of the claim shall be submitted to the other party the same day such is submitted to the Owner's Representative.
- (2) The decision by the Owner's Representative in response to said request shall not be a condition precedent to a request for informal hearing before the Owner in the event (a) the position of the Owner's Representative is vacant, (b) the Claim is based upon an error or omission of the Owner's Representative and the claimant requests that the initial determination be by said Owner, (c) the Owner's Representative has failed to take action as required under Subparagraph 4.4.4 within the required time, or (d) the Claim is related to a mechanic's lien.

4.3.2 TIME LIMITS AND CONTENT OF CLAIMS.

- (1) Except as provided in Subparagraph 4.3.5 hereinbelow, Claims by either party must be made within 21 days after the occurrence of the event giving rise to such Claim, or within 21 days after the Claimant first recognizes or should have readily recognized the condition giving rise to the Claim, whichever is later. CLAIMS SHALL BE MADE BY WRITTEN NOTICE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE OWNER'S REPRESENTATIVE WITH A COPY SENT THE SAME DAY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE OTHER PARTY. An additional Claim made after the initial Claim has been implemented by Change Order shall not be considered unless submitted in a timely manner.
- (2) All Claims shall state the specific grounds relied upon and the specific relief requested. Detailed records supporting the Claim need not accompany the Claim, but must be maintained and made available, to the extent such records are customarily maintained and would be discoverable in a Utah court of law, within a reasonable time upon request.

4.3.3 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim, unless otherwise agreed upon in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 WAIVER OF CLAIMS: FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- (1) liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- (2) failure of the Work to comply with the requirements of the Contract Documents;
- (3) terms of warranties required by the Contract Documents; or
- (4) the one-year warranty period and any corrected Work.

4.3.5 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.

- (1) If conditions are encountered at the site which are (a) unknown and reasonably unforeseeable subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature,

which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice of Claim by the observing party shall be given to the Owner's Representative and other party promptly before conditions are disturbed and in no event later than 21 days after the first observance of the conditions.

- (2) The Owner's Representative shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both in the Owner's Representative's written decision in accordance with Subparagraph 4.4.4 hereinbelow.
- (3) If the Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner's Representative shall promptly so notify the Owner and Contractor in the Owner's Representative's written decision in accordance with Subparagraph 4.4.4. hereinbelow.

4.3.6 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be delivered to the Owner's Representative and the Owner before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3 of these General Conditions. If the Contractor believes that additional cost is involved for reasons including, but not limited to (1) a written interpretation from the Owner's Representative, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a Field Order, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, the written Claim shall be delivered to the Owner's Representative and the Owner in accordance with the procedure established herein.

4.3.7 CLAIMS FOR ADDITIONAL TIME.

- (1) If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include the probable effect of delay on the progress of the Work. In the case of a continuing delay only one Claim is necessary.
- (2) If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the subject period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.8 INJURY OR DAMAGE TO PERSON OR PROPERTY. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees, agents or independent contractors, or others for whose acts such other party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the Owner's Representative and the other party within a reasonable time not exceeding 21 days after the first observance or when such should have been readily observed. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is asserted, it shall be filed as provided in Subparagraphs 4.3.6 or 4.3.7 hereinabove.

4.4 RESOLUTION OF CLAIMS AND DISPUTES.

4.4.1 RESPONSE BY OTHER PARTY TO CLAIM. The other party receiving a copy of the Claim shall have seven (7) days from the date of receipt thereof, to respond to the Claim, certified mail, return receipt requested, to the Owner's Representative with a copy to the Claimant. The response may also be made within said time period by telephone conference or meeting if such can be arranged.

4.4.2 REPLY DISCRETIONARY WITH OWNER'S REPRESENTATIVE. The Owner's Representative may permit a reply by the Claimant to the response of the non-claimant party if such does not interfere with the timely issuance of a decision by the Owner's Representative. The Owner's Representative shall make a summarized

record of any telephone conferencing or meetings used in the Claim resolution process to ascertain facts, data or pursue settlement of the Claim.

4.4.3 RESOLVED CLAIMS. If a Claim has been resolved, the Owner's Representative shall promptly prepare or obtain appropriate documentation.

4.4.4 MEDIATION. If action is to be taken in District Court, and if Owner so requests, Contractor agrees to select one (1) mediator from list, provided by Owner, of three (3) mediation firms and participate in a mediation process with each party to pay its fair share of the mediation expenses. Contractor also agrees to cooperate in such selection with any involved third parties, such as the Owner's Representative.

ARTICLE 5. SUBCONTRACTORS

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

5.1.1 REQUIREMENTS. All Subcontractors and Sub-subcontractors utilized by the Contractor shall comply with the requirements of the State of Utah Department of Commerce, particularly in regard to license classification and, if currently in effect, financial bid limits.

5.1.2 ADJUSTMENTS IF OBJECTION. If the Owner or Owner's Representative has a reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Owner's Representative has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.1.3 SUBSEQUENT CHANGES.

- (1) After the lapse of twenty-four (24) hours from the bid opening, the Contractor may change its Subcontractors only with written approval of Owner and after having established that the change is considered to be in the best interest of the Owner or that there exists a good and sufficient reason for the change, such as error in bid figures, financial irresponsibility, inability of a Subcontractor to perform, or other good reason.
- (2) Notwithstanding the above, the Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change.
- (3) Any approved changes in Subcontractors requested by the Contractor that result in a net lower contract price for subcontracted work shall accordingly reduce the total sum of the prime contract.

5.2 SUBCONTRACTUAL RELATIONS.

5.2.1 COMPLY WITH CONTRACT DOCUMENTS. By appropriate enforceable agreement, which shall be written when legally required for its validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes towards the Owner and Owner's Representative.

5.2.2 RIGHTS. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner's Representative under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and remedies against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

5.2.3 SUB-SUBCONTRACTORS. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors which complies with the requirements of Subparagraphs 5.2.1 and 5.2.2 hereinabove.

5.2.4 DOCUMENT COPIES. The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of the Contract Documents available to their respective proposed Sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

5.3.1 CONDITIONS FOR ASSIGNMENT TO OWNER. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- (1) the assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 or stoppage of the Work by Owner pursuant to Paragraph 14.5, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- (2) If the work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.

6.1.1 IN GENERAL. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor has a compensable Claim due to such action by the Owner, the Contractor shall make such Claim in accordance with Article 4.

6.1.2 COORDINATION AND REVISIONS. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and agreement by the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.3 RIGHTS AND OBLIGATIONS. Except as otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Articles 3, 6, 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY.

6.2.1 CONTRACTOR COORDINATION. The Contractor shall afford the Owner and separate contractor(s) a reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 REPORTING PROBLEMS TO OWNER'S REPRESENTATIVE. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner's Representative

apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to make said report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

6.2.4 CONTRACTOR REMEDIAL WORK. The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.6.

6.2.5 CLAIMS BETWEEN CONTRACTOR AND SEPARATE CONTRACTOR. Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations. If such separate contractor initiates legal or other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall so notify the Contractor. The Contractor shall defend the portion of the proceeding related to the Contractor's responsibility at its own expense. If any judgment or award against the Owner arises therefrom, to the extent the judgment or award relates to the Contractor's responsibility, the Contractor shall pay or satisfy it and shall reimburse the Owner, when Contractor fails to defend the Owner, for all attorneys' fees and court or other costs which the Owner has incurred, over and above those paid for directly by the Contractor.

ARTICLE 7. MODIFICATIONS

7.1 MODIFICATIONS.

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

7.1.2 BY WHOM ISSUED. A Change Order shall be based upon agreement among the Owner, Contractor and Owner's Representative; a Construction Change Directive requires agreement by the Owner and Owner's Representative and may or may not be agreed to by the Contractor; and a Field Order is prepared and issued by the Owner's Representative and may not change the Contract Sum or Contract Time.

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

7.1.4 ADJUSTING UNIT PRICES. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause a substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS.

7.2.1 DEFINED. A Change Order is a written instrument prepared by the Owner's Representative and signed by the Owner, Contractor and Owner's Representative, stating their agreement upon all of the following:

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

7.2.2 METHODS FOR ADJUSTING SUM. Methods used in determining adjustments to the Contract Sum may include those listed in this Paragraph 7.2.

7.2.3 ADJUSTING SUM. If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) unit prices stated in the Contract Documents or subsequently agreed upon;
- (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee with the Contractor providing, in such form as the Owner's Representative may prescribe, an itemized accounting with appropriate supporting data; or
- (4) as provided in Subparagraph 7.2.4 hereinbelow.

7.2.4 OWNER'S REPRESENTATIVE RESOLUTION OF SUM AND STANDARDS. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum for a Change Order, the method and the adjustment shall be determined by the Owner's Representative on the basis of reasonable actual costs and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, allowance for overhead and profit as further described below. In such case the Contractor shall provide, in such form as the Owner's Representative may prescribe, an itemized accounting with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph shall be limited to the following:

- (1) all direct and indirect costs of labor; including workers compensation insurance, social security and other federal and state payroll based taxes, and payroll based fringe benefits paid by Contractor so long as they are reasonable and no higher than that charged to other clients;
- (2) costs of materials, on-site temporary facilities, supplies and equipment required for or incorporated into the work (including costs of transportation of such items);
- (3) rental costs of machinery, equipment, tools (except hand tools), and on-site temporary facilities, whether rented from the Contractor or others;
- (4) costs of permits and other fees, sales, use or similar taxes related to the Work;
- (5) additional costs of field supervision and field office personnel directly attributable to the change; and
- (6) overhead and profit by the following liquidated formula which is not a penalty but a reasonable calculation agreed upon at the time of execution of the Contractor's Agreement, and provided by formula herein due to the fact that the actual amount due for said overhead and profit cannot easily be ascertained at the time of such execution. Each request for pricing shall stand on its own and not be combined with other requests for pricing in determining the allowed markup described below. A particular request for pricing shall include all items reasonably related together and determinable at the time of the request. If several unrelated requests for pricing are grouped together in a single Change Order, each request for pricing will be considered separately for purposes of calculating the markup under the following formula:
 - (a) A markup of 15% shall be applied to the cost of each individual change up to \$10,000 in cost, but in no case shall the markup be less than \$150;
 - (b) A markup of 10% shall be applied to the portion of the cost of each individual charge in excess of \$10,000;
 - (c) The markups in 7.2.4(6)(a) and (b) above are to cover the Contractor's additional payment and performance bond premiums, insurance premiums not specified under 7.2.4(1) above, home office overhead and profit unless there is a compensable Owner-

caused delay under Paragraph 8.3 hereinbelow in which event the Contractor is entitled to compensation for extended home office overhead costs based on the final result of the following formula: Contract Sum divided by Contract Time (in calendar days); the result of which is then multiplied by 0.05; and the result of which is multiplied by the number of calendar days of compensable days under Paragraph 8.3 hereinbelow that are beyond the Contract Time; and

- (d) Subcontractors at any tier shall be entitled to markup their costs related to a Change Order with the same percentages as specified in 7.2.4(6)(a) and (b) above, except that the minimum markup shall be \$50 for any individual change.

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

7.2.6 AGREEMENT; CHANGE ORDER ISSUED. When the Owner, Owner's Representative and Contractor agree on the adjustment in the Contract Time and/or Contract Sum, the agreed to adjustment shall be incorporated in an appropriate Change Order.

7.2.7 DISAGREEMENTS; CLAIMS PROCESS STILL APPLIES; CONSTRUCTION CHANGE DIRECTIVE MAY BE ISSUED. If there is no agreement with the adjustment in Contract Time and/or Contract Sum, then the disagreement is still subject to the Article 4 claims resolution process. A Construction Change Directive may be issued in the interim.

7.3 CONSTRUCTION CHANGE DIRECTIVES.

7.3.1 DEFINED. A Construction Change Directive means a written order recommended by the Owner's Representative, prepared by the Engineer or Architect and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions; the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 USED WHEN LACK OF AGREEMENT ON CHANGE ORDER. A Construction Change Directive shall be subject to the same calculations of adjustments as used in a Change Order, but is issued in the absence of total agreement on the terms of a Change Order.

7.3.3 PROCEED WITH WORK AND NOTIFY OWNER'S REPRESENTATIVE ABOUT ADJUSTMENT METHOD. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Representative and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Any disagreement is still subject to the requirements of the claims resolution process in Article 4 hereinabove.

7.3.4 IS CHANGE ORDER IF CONTRACTOR AGREES. A Construction Change Directive signed by the Contractor indicates agreement of the Contractor therewith, including adjustment in the Contract Sum and Contract Time or the method for determining them. Upon such agreement, the Construction Change Directive shall become a Change Order.

7.4 FIELD ORDER.

The Owner's Representative will have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor wishes to contend that

said minor change does involve an adjustment in the Contract Sum and/or Contract Time, the Contractor shall promptly notify the Owner's Representative of the Contractor's position regarding compensation and time. If such contention is not resolved with the Owner, the Contractor has twenty-one (21) days from the date of Contractor's receipt of the Field Order to file a Claim under Article 4.

ARTICLE 8. TIME

8.1 PROGRESS AND COMPLETION.

8.1.1 TIME OF ESSENCE. The time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contractor's Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.1.2 NOTICE TO PROCEED AND INSURANCE. The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the issuance of a Notice to Proceed by the Owner or prior to the effective date of insurance required by Article 11 to be furnished by the Contractor, whichever is the latter.

8.1.3 COMPLETE WITHIN CONTRACT TIME. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2 DELAYS AND EXTENSIONS OF TIME.

8.2.1 EXCUSABLE DELAYS.

- (1) If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Owner's Representative, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work as reflected in a Change Order approved by the Owner that provides for the Contract Time to be extended, or by strikes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control or by other causes which the Owner's Representative determines may justify delay, then the Contract Time shall be extended by Change Order or Construction Change Directive for such reasonable time as the Owner's Representative may determine. The Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on the Owner.
- (2) Notwithstanding the above, to the extent any of the causes for delay were reasonably foreseeable by the Contractor or avoidable by the Contractor, then to such extent the delay shall not be cause for extension of the Contract Time.

8.2.2 CLAIMS. Claims relating to time shall be made in accordance with the applicable provisions of Paragraph 4.3 of these General Conditions.

8.3 BASIS FOR COMPENSABLE DAMAGES FOR DELAY, SUSPENSION OR INTERRUPTION

8.3.1 WHEN ALLOWABLE. In the following described circumstances only, the Contractor is entitled to extended home office overhead costs, which are calculated by the formula in Subparagraph 7.2.4(6)(c):

- (1) A delay, suspension or interruption of the work occurs which:
 - (a) is wholly unanticipated by the parties at the time of execution of the Contractor's Agreement;
 - (b) is caused by the breach of a fundamental obligation of the Contract Documents attributable to the Owner (or Owner's Representative);

- (c) continues at least five (5) calendar days after the Contractor files a claim under Article 4 and such is received by the Owner and said continuation affects the Contract Time as indicated by the Project's critical path schedule.

8.3.2 PERIOD OF COMPENSABLE DELAY, SUSPENSION OR INTERRUPTION. The time period for purposes of calculating the extent of compensable delay, shall be determined, with the use of the Project's critical path schedule, by ascertaining the number of additional days to the Contract Time that are needed in order to perform the Work in accordance with the Contract Documents as a result of the continuation of the aforesaid delay, suspension or interruption after receipt of the notice by the Owner under 8.3.1(1)(c) above.

8.3.3 USE OF CRITICAL PATH SCHEDULE. The critical path schedule as used in this Paragraph 8.3, shall be based on the latest version of the Contractor's schedule for the Project prepared under Subparagraph 3.8.1 and submitted to the Owner prior to the commencement of the alleged delay, suspension or interruption. Said schedule shall be subject to challenge by the Owner if the Owner reasonably finds that such schedule does not accurately represent the Project's actual critical path.

8.3.4 EXCEPTIONS. Notwithstanding the above, no compensation for extended home office overhead shall be provided whenever the performance would have been so delayed, suspended or interrupted by any cause for which the Contractor is responsible, or for which such additional compensation is provided or excluded under any other provision of the Contract Documents.

8.4 LIQUIDATED DAMAGES.

8.4.1 IN GENERAL. Should the Contractor fail to complete the Work within the Contract Time, there shall be deducted from any amount due or that may become due the Contractor, the sum as stated in the Contractor's Agreement. Such sum is fixed and agreed upon by the Owner and Contractor as liquidated damages due the Owner by reason of the inconvenience and added costs of administration, Owner's Representativeing, supervision and other costs resulting from the Contractor's default, and not as a penalty. Actual damages can not be ascertained at the time of execution of the Contract. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such excess to the Owner. Owner may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees.

8.4.2 PROCEEDING WITH WORK NOT DEEMED WAIVER. Permitting the Contractor to continue and finish the Work or any part of the Work after the time fixed for completion or any authorized extension thereof, shall in no way operate as a waiver or estoppel on the part of the Owner of any of its rights under the Contract Documents, including the right to liquidated damages or any other remedies or compensation.

ARTICLE 9. PAYMENTS AND COMPLETION

9.1 SCHEDULE OF VALUES.

9.1.1 SCHEDULE OF VALUES. Before the first Application for Payment, the Contractor shall submit to the Owner's Representative a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.1.2 FORM. The schedule of values shall be prepared in such a manner that each major item of the Work and each subcontracted item of the Work is shown as a separate line item on AIA Document G703, Application and Certification for Payment, Continuation Sheet, or other form acceptable to the Owner.

9.2 APPLICATIONS FOR PAYMENT.

9.2.1 IN GENERAL. The Contractor shall submit to the Owner's Representative an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Owner's Representative

may require. Said data may include, but is not limited to, copies of requisitions from Subcontractors and material suppliers, and reflects retainment as provided for in the Contractor's Agreement.

- (1) Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in a Change Order.
- (2) Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.2.2 PAYMENT FOR MATERIAL AND EQUIPMENT. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner and Owner's Representative, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.2.3 WARRANTY OF TITLE. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time for payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, Sub-subcontractors, or other persons or entities making a claim by reason of having provided labor, materials and/or equipment relating to the Work.

9.2.4 HOLDBACK BY OWNER. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may, with consent of the Owner's Representative or as a result of the claims resolution process, withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

9.3 CERTIFICATES FOR PAYMENT.

9.3.1 ISSUED BY OWNER'S REPRESENTATIVE. The Owner's Representative shall within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner's Representative determines due, or notify the Contractor and Owner in writing of the Owner's Representative's reasons for withholding certification in whole or in part as provided in Subparagraph 9.4.1. The accuracy of the Contractor's Applications for Payment shall be Contractor's responsibility, not Owner's Representative's.

9.3.2 OWNER'S REPRESENTATIVE'S REPRESENTATIONS. The issuance of a Certificate for Payment by the Owner's Representative to the Owner, shall constitute a representation to the Owner, based on the Owner's Representative's observations at the site and the data comprising the Application for Payment, that, based upon the Owner's Representative's knowledge or what should have been reasonably inferred from the observations and data, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Owner's Representative. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Owner's Representative has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (b) reviewed construction means, methods, techniques, sequences or procedures, (c) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (d) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.4 DECISIONS TO WITHHOLD CERTIFICATION.

9.4.1 WHEN WITHHELD. The Owner's Representative may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Representative's opinion the representations to the Owner required in Subparagraph 9.3.2 above can not be made or under Subparagraph 9.2.4 above. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner's Representative shall notify the Contractor and Owner as provided in Subparagraph 9.3.1 above. If the Contractor and Owner's Representative can not agree on a revised amount, the Owner's Representative shall promptly issue a Certificate for Payment for the amount to which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative may also decide not to certify payment or, because of subsequently discovered evidence or observations, may nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's Representative's opinion to protect the Owner from loss because of:

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims;
- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (5) damage to the Owner or another contractor;
- (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) failure to carry out the Work in accordance with the Contract Documents.

9.4.2 CERTIFICATION ISSUED WHEN REASONS FOR WITHHOLDING REMOVED. When the reasons stated in Subparagraph 9.4.1 for withholding certification are removed, certification will be made for such related amounts.

9.4.3 CONTINUE WORK EVEN IF CONTRACTOR DISPUTES OWNER'S REPRESENTATIVE'S DETERMINATION. If the Contractor disputes any determination by the Owner's Representative or the result of the claims resolution process with regard to any Certification of Payment, the Contractor nevertheless shall expeditiously continue to prosecute the Work.

9.4.4 OWNER NOT IN BREACH. The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Owner's Representative has approved the Owner's action or such withholding is consistent with the results of the claims resolution process.

9.5 PROGRESS PAYMENTS.

9.5.1 IN GENERAL. After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payment to Sub-subcontractors in a similar manner.

9.5.3 INFORMATION FURNISHED BY OWNER'S REPRESENTATIVE TO SUBCONTRACTOR.

The Owner's Representative shall, on request, furnish to the Subcontractor or Sub-subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner's Representative and Owner on account of portions of the Work done by such Subcontractor or Sub-subcontractor.

9.5.4 OWNER AND OWNER'S REPRESENTATIVE NOT LIABLE. Neither the Owner or Owner's Representative shall have an obligation to pay, monitor or enforce the payment of money to a Subcontractor or Sub-subcontractor, except to the extent as may otherwise be required by law.

9.5.5 CERTIFICATE, PAYMENT OR USE NOT ACCEPTANCE OF IMPROPER WORK. A

Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

9.6 SUBSTANTIAL COMPLETION.**9.6.1 INSPECTION AND PUNCHLIST.**

- (1) When the Contractor considers the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall so inform the Owner's Representative. The Owner's Representative, with the requested presence and comments of the Owner, shall promptly perform a Substantial Completion inspection and prepare and submit to the Contractor a comprehensive punchlist of items to be completed or corrected.
- (2) The Contractor shall proceed promptly to complete and correct items on the list.
- (3) Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- (4) When the Work or designated portion thereof is Substantially Complete, the Owner's Representative shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion; shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate.
- (5) Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof except to the extent as provided otherwise in the Contract Documents or if such warranty is related to an item where the Work is not complete.
- (6) The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.6.2 PAYMENT UPON SUBSTANTIAL COMPLETION. Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Owner's Representative, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.6.3 DELIVERING WARRANTIES AND GUARANTEES. The Contractor shall secure and deliver to the Owner's Representative, for the Owner, written warranties and guarantees, as well as operation and maintenance manuals, from its Subcontractors, Sub-subcontractors and suppliers stating the period of warranty as required by the Contract Documents and bearing the date of Substantial Completion or some other date as may be agreed to by the Owner or stated otherwise in the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier.

9.7 PARTIAL OCCUPANCY OR USE.

9.7.1 IN GENERAL. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainment if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of the warranties required by the Contract Documents. When the Contractor considers a portion to be substantially complete, the Contractor shall prepare and submit a list to the Owner's Representative as previously provided for herein. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of progress of the Work shall be determined by written agreement between the Owner and Contractor, or, if no agreement is reached, by decision of the Owner's Representative.

9.7.2 INSPECTION. Immediately prior to such partial occupancy or use, the Owner, Contractor and Owner's Representative shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.7.3 NOT CONSTITUTE ACCEPTANCE. Except to the extent it is agreed upon in writing by the Owner, partial occupancy or use of a portion or portion of the Work shall not constitute acceptance of Work not complying with the requirement of the Contract Documents.

9.8 FINAL COMPLETION AND FINAL PAYMENT.

9.8.1 CERTIFICATE FOR PAYMENT. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative shall promptly make such inspection and, when the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative shall promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Owner's Representative's final Certificate for Payment shall constitute a further representation that conditions listed in Subparagraph 9.8.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.8.2 CONDITIONS FOR FINAL PAYMENT AND RETAINAGE. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Representative the following:

- (1) an affidavit that payrolls, bills for material and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- (2) a current or additional certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice, by certified mail, return receipt requested, has been given to the Owner;
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (4) if requested by surety in a timely manner, consent of surety, if any, to final payment;
- (5) a reasonable sum may be withheld until the Contractor delivers to the Owner's Representative, Record Drawings, Specifications, Addenda, Change Orders and other Modifications maintained at the site.
- (6) the warranties, and instructions and operation and maintenance manuals required to be furnished; and

- (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Sub-subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.8.3 DELAYS NOT CONTRACTOR'S FAULT. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner's Representative so confirms in writing, the Owner shall, upon application by the Contractor and certification by the Owner's Representative, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.4 of these General Conditions.

9.8.4 WAIVER BY ACCEPTING FINAL PAYMENT. Acceptance of final payment by the Contractor, a Subcontractor or Sub-subcontractor shall constitute a waiver of Claims by that payee except those Claims previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.4 of these General Conditions.

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS.

10.1.1 CONTRACTOR RESPONSIBILITY. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 HAZARDOUS MATERIALS. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or any other hazardous waste or substance which may endanger the health of those persons performing the Work or being on the site, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Owner's Representative in writing. The Work in the affected area shall be resumed in the absence of asbestos, polychlorinated biphenyl (PCB) or said hazardous waste or substance, or when it has been rendered harmless according to the Federal and State health standards. Except to the extent provided otherwise in the Contract Documents, the Contractor shall not be required to perform without consent, any Work relating to asbestos, polychlorinated biphenyl (PCB) or any other hazardous waste or substance.

10.2 SAFETY OF PERSONS AND PROPERTY.

10.2.1 CONTRACTOR RESPONSIBILITY. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 SAFETY PROGRAM, PRECAUTIONS. The Contractor shall institute a safety program at the start of construction to minimize accidents. Said program shall continue to the final completion of the Project and conform to applicable laws and regulations including the Utah Occupational Safety and Health Rules and Regulations as published by the Utah Industrial Commission - UOSH Division. The Contractor shall post signs, erect barriers, and provide those items necessary to implement the safety program. As soon as the Contractor proceeds with the Work, the Contractor shall have all workers and all visitors on the site wear safety hard hats and obey all safety rules and regulations and statutes. The Contractor shall post a sign in a conspicuous location indicating the necessity of wearing hard hats and the Contractor shall loan such hats to visitors.

10.2.3 COMPLIANCE WITH LAWS. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. In particular, the Contractor shall comply with all applicable provisions of Federal, State and municipal safety laws, rules and regulations as well as building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

10.2.4 ERECT AND MAINTAIN SAFEGUARDS. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.5 UTMOST CARE. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.6 PROMPT REMEDY. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Subparagraph 10.2.1 of these General Conditions caused in whole or in part by the Contractor, Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under said Subparagraph 10.2.1, except to the extent such damage or loss is directly due to errors in the Contract Documents or caused by agents or employees of the Owner's Representative or Owner. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.14 of these General Conditions.

10.2.7 SAFETY DESIGNEE. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Owner's Representative.

10.2.8 LOAD SAFETY. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.9 OFF-SITE RESPONSIBILITY. In addition to its other obligations under this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, streets, ways, sidewalks, curbs and the property of third parties (including municipalities and other governmental agencies) resulting from the performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall not cause materials, including soil and debris, to be placed or left on streets or ways.

10.3 EMERGENCIES.

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7 of these General Conditions.

ARTICLE 11. INSURANCE AND BONDS

11.1 LIABILITY INSURANCE.

11.1.1 IN GENERAL. To protect against liability, loss and/or expense arising from damage to property or injury or death of any person or persons incurred in any way out of, in connection with or resulting from the Work provided hereunder, Contractor shall obtain and maintain in force during the entire period of this Contract, at its own expense, the following insurance from insurance companies authorized to do business in the State of Utah and rated "A" or better with a financial size category of (a) Class X or larger where the Contract Sum is \$1,000,000 or greater or (b) Class VII or larger where the Contract Sum is under \$1,000,000. Said rating and financial size category shall be as published by A.M. Best Company at the time the Contract is executed.

- (1) Workers' Compensation Insurance and Employers' Liability Insurance providing statutory benefits. The Best's rating requirements are waived for coverage provided by the Workers' Compensation Fund of Utah. The Contractor shall require all Subcontractors at any tier to take and maintain similar policies of Workers' Compensation Insurance.
- (2) Commercial General Liability Insurance and/or Comprehensive General Liability Insurance, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, contractual (including this Contract), and personal injury, including employees, with limits of not less than \$1,000,000 each occurrence, and not less than \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. Aggregate limit shall be designated as applying to this Contract. If this insurance coverage is written on a "claims-made" basis, the certificate of insurance required below shall so indicate and the policy shall contain an extended reporting period provision or similar "tail" provision such that claims reported up to three (3) years beyond the date of Substantial Completion of this Contract are covered.
- (3) Comprehensive Automobile Liability Insurance including owned, hired and non-owned automobiles with limits not less than \$1,000,000 any one accident or loss.
- (4) Contractor using its own aircraft, or employing aircraft in connection with the Work performed under this Contract shall maintain Aircraft Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence.
- (5) Owners Protective Liability Insurance with limits of not less than \$1,000,000 shall be purchased and maintained by Contractor. The **NORTH LOGAN CITY AND HYDE PARK CITY** and all institutions, agencies, departments, authorities and instrumentalities, and while acting within the scope of their duties, all of its elected or appointed officers, agents, employees and authorized volunteers as well as members of governing bodies, boards, commissions and advisory committees, shall be named as insureds, but, only in respect to the Work to be performed under this Contract.

11.1.2 CONFIGURATIONS. Any policy required by this section may be arranged under a single policy for the full limit required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

11.1.3 CONTRACTOR LIABILITY. Irrespective of the requirements as to insurance to be carried by Contractor as provided herein; insolvency, bankruptcy or failure of any insurance company to pay all claims accruing, shall not be held to relieve Contractor of any obligations hereunder.

11.1.4 CERTIFICATE, NOTICE REQUIREMENTS, ADDITIONAL INSURED. Before the Contract Agreement is executed, certificates evidencing coverages as specified above are in effect, shall be furnished to the Owner. Such insurance certificates shall contain provisions that no cancellation, material change therein or non-renewal shall become effective except upon thirty (30) days prior written notice to the Owner as evidenced by return receipt, certified mail sent to Owner. The Contractor shall notify the Owner within thirty (30) days of any claim(s) against the Contractor, and if such claim(s) exceed 20% of the applicable required insured limits, the Owner may require the Contractor to re-instate the policy to provide full protection at the original limits. For any risk not covered by the Owner's protective liability insurance policy or the worker's compensation policies, the **NORTH LOGAN CITY AND HYDE PARK CITY** shall be named as an additional insured party, as primary coverage and not contributing.

11.1.5 DEDUCTIBLE LIABILITY. Any and all deductibles in the above described policies shall be assumed by, for the account of, and at sole risk of Contractor.

11.1.6 ALTERNATIVE COVERAGE. The Owner's Risk Manager may approve alternative forms of insurance to those stated above based on a finding of reasonable unavailability.

11.2 "BUILDER'S RISK" PROPERTY INSURANCE.

11.2.1 IN GENERAL. Owner shall provide "Builder's Risk" property insurance to protect Owner, as well as all Contractors, Subcontractors and Sub-subcontractors, and include them as insureds, with respect to Work performed hereunder at Owner's own cost and expense, according to the policy forms currently in force with insurance carriers selected by Owner's Risk Manager or issued by the State Risk Management Fund. Owner's Risk Manager shall furnish, upon request, all parties in interest with copies of said policies authenticated by authorized agents of the insurers or the State Risk Management Fund.

11.2.2 INSPECTIONS, RECOMMENDATIONS. Owner, the *Division of Risk Management and the Builder's Risk insurers shall have the right to inspect the Work. The Contractor shall comply with reasonable risk control recommendations made by insurers or the *Division of Risk Management. Such inspections or recommendations do not relieve the Contractor of any of its responsibilities under the Contract Documents.

11.2.3 DEDUCTIBLE. The above described "Builders Risk" policies shall be subject to a total deductible of \$5,000 per loss occurrence, which shall be assumed by all Contractors, Sub-Contractors, or Sub-subcontractors in proportion to their share of the total amount of an insured loss occurrence.

11.2.4 ADJUSTED WITH AND PAYABLE TO RISK MANAGER AS TRUSTEE. Any insured property loss is to be adjusted with the Owner's Risk Manager, and made payable to the Owner's Risk Manager as trustee for the Contractor and all Subcontractors and Sub-subcontractors, as their interests may appear, subject to the requirements of any applicable loss payable clause.

11.2.5 WAIVER. Contractor and Owner hereby waive all rights against each other for damages caused by perils insured against under the "Builder's Risk" insurance provided by Owner, except such rights as Contractor may have to the proceeds of such insurance held by the Owner's Risk Manager as trustee.

11.2.6 SPECIAL HAZARDS. Owner shall bear the risk of loss, delay and/or damage due to earthquake and/or flood and may either insure or self-insure that risk. If the Contractor requests in writing that insurance for other special hazards be included in the "Builder's Risk" policy, the Owner's Risk Manager shall, if possible, include such insurance in the policy and the cost thereof shall be charged to the Contractor by Change Order.

11.3 PERFORMANCE BOND AND PAYMENT BOND.

The Contractor shall submit and maintain in full force and effect as required by law and the Contract Documents, at its own expense, on forms provided and include as part of the quoted total all costs involved in securing and furnishing, the bonds listed below, based on the completed cost of the Contract and effective upon execution of the Contract. Said bonds shall be from surety companies which are authorized to do business in the State of Utah, listed in the U. S. Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, and acting within the limitation listed therein.

- (1) A full 100 percent performance bond covering the faithful execution of the Contract in accordance with the Contract Documents; and
- (2) A full 100 percent payment bond covering payment of all obligations arising under the Contract Documents, for the protection of each person supplying labor, service, equipment, or material for the performance of the Work.

ARTICLE 12. UNCOVERING, CORRECTION OF WORK AND WARRANTY PERIOD

12.1 UNCOVERING OF WORK.

12.1.1 WHEN OWNER'S REPRESENTATIVE REQUESTED PRIOR. If a portion of the Work is covered contrary to the Owner's Representative's or Owner's request or to the Contract Documents, it must, if required in writing by the Owner's Representative, be uncovered for the Owner's Representative's and Owner's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 WHEN OWNER'S REPRESENTATIVE DID NOT REQUEST PRIOR. If a portion of the Work has been covered which the Owner's Representative or Owner has not specifically requested to observe prior to its being covered, the Owner's Representative or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement, shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK AND WARRANTY PERIOD.

12.2.1 CONTRACTOR CORRECT THE WORK. The Contractor shall correct Work rejected by the Owner's Representative or Owner, or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear the costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner's Representative's services and expenses made necessary thereby.

12.2.2 WARRANTY AND CORRECTION AFTER SUBSTANTIAL COMPLETION. If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Article 9 or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, including failure to perform for its intended purpose, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation of the Contractor under this Subparagraph 12.2.2 shall be operative notwithstanding the acceptance of the Work under the Contract, the final certificate of payment, partial or total occupancy and/or termination of the Contract. The Owner shall give notice of observed defects with reasonable promptness, however, failure to give such notice shall not relieve the Contractor of its obligation to correct the Work at the cost that the Contractor would have incurred if the Owner did so report with reasonable promptness. All corrected Work shall be subject to a one-year warranty period the same in all respects as the original Work, except that such warranty period shall commence from the time of Substantial Completion of the corrected Work. This warranty period does not affect the Owner's right to pursue any available remedies against Contractor.

12.2.3 REMOVAL OF WORK.

- (1) The Contractor shall promptly remove from the premises all Work that the Owner and/or the Owner's Representative determines as being in nonconformance with the Contract Documents, whether incorporated or not.
- (2) The Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner.
- (3) The Contractor shall bear the expense of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or of other contractors destroyed or damaged by such removal or replacement.
- (4) If the Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, the Owner may have the materials removed and stored at the expense of the Contractor.

- (5) If the Contractor does not correct the nonconforming Work within a reasonable time, fixed by written notice, the Owner may correct it in accordance with Paragraph 14.2.2 of these General Conditions.

12.2.4 NOT LIMIT OTHER OBLIGATIONS. Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor may have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK.

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 OWNER'S REPRESENTATIVE'S RESPONSIBILITIES.

These General Conditions are not intended to provide an exhaustive or complete list of the Owner's Representative's responsibilities. A separate agreement between the Owner and Owner's Representative incorporates these General Conditions by reference.

13.2 SUCCESSORS AND ASSIGNS.

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract without the prior written consent of the Owner, nor shall the Contractor assign any amount due or to become due as well as any rights under the Contract, without prior written consent of the Owner.

13.3 WRITTEN NOTICE.

13.3.1 PERSONAL DELIVERY AND REGISTERED OR CERTIFIED MAIL. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice.

13.3.2 FAX. Notwithstanding any other provision of these General Conditions, written notice shall also be deemed to have been duly served by verified use of a FAX system by using the known and operative calling number. Service by use of the FAX system is encouraged when timely notice will benefit the Owner, Owner's Representative or Contractor. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the FAX system, if on the same day notice is also sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice, confirming the FAX delivery.

13.4 RIGHTS AND REMEDIES.

13.4.1 NOT LIMIT. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 NOT WAIVER. No action or failure to act by the Owner, Owner's Representative or Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to

act constitute approval or acquiescence in a breach thereunder, except as any of the above may be specifically agreed to in writing. In no case shall the Contractor or any of its Subcontractors at any tier be entitled to rely upon any waiver of any of these General Conditions unless agreed to in writing by the Owner.

13.5 TESTS AND INSPECTIONS.

13.5.1 IN GENERAL. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, resolutions or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise specifically set forth in the Contract Documents or agreed to by the Owner in writing, the Contractor shall make arrangements for such tests, inspections and approvals with an independent entity specifically approved by the Owner for the Project, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections and approvals except as provided in 13.5.3 below. The Contractor shall give the Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative may observe such procedures.

13.5.2 UPON REQUEST. If the Owner's Representative, Owner or public authorities having jurisdiction, determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1 above, the Owner's Representative shall instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity specifically approved by the Owner for the Project. The Contractor shall give timely notice to the Owner's Representative of when and where tests and inspections are to be made so that the Owner's Representative may observe such procedures. The Owner shall bear such costs under this Subparagraph except as provided in Subparagraph 13.5.3 below.

13.5.3 NONCONFORMING WORK. If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and/or 13.5.2 reveal failure of portions of the Work to comply with the requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's Representative's services and expenses, including the cost of retesting for verification of compliance if necessary, until the Owner's Representative accepts the Work in question as complying with the requirements of the Contract Documents.

13.5.4 CERTIFICATES. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Representative.

13.5.5 OWNER'S REPRESENTATIVE OBSERVING. If the Owner's Representative is to observe tests, inspections or approvals required by the Contract Documents, the Owner's Representative shall do so with reasonable promptness and, where practicable, at the normal place of testing.

13.5.6 PROMPTNESS. Tests, inspections and arrangements for approvals conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD.

13.6.1 BEFORE SUBSTANTIAL COMPLETION. Except as provided in 13.6.4 below, as to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.6.2 BETWEEN SUBSTANTIAL COMPLETION AND FINAL CERTIFICATION FOR PAYMENT. Except as provided in 13.6.4 below, as to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certification for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certification for Payment.

13.6.3 AFTER FINAL CERTIFICATION FOR PAYMENT. Except as provided in 13.6.4 below, as to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.4, the date of any correction of the Work or failure to correct the Work by the Contractor under

Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.6.4 EXCEPTION. Notwithstanding any other provision of this Paragraph 13.6 to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by the Owner until after the date which, but for this Subparagraph 13.6.4, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the Owner.

13.7 NOT DISCRIMINATE, NO SEXUAL HARASSMENT.

Pursuant to the laws of the State of Utah, the Contractor, Subcontractors, Sub-subcontractors, or anyone for whose act any of them may be liable, will take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. Contractor, Subcontractors, Sub-subcontractors, or anyone for whose act any of them may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.

ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY CONTRACTOR.

14.1.1 IN GENERAL. If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with any of the above, the Contractor, may terminate the Contract in accordance with 14.1.2 hereinbelow for any of the following reasons:

- (1) because the Owner has persistently failed to fulfill fundamental Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work;
- (2) issuance of an order of a court or other public authority having jurisdiction, except that where the Contractor has standing, the Contractor must cooperate in efforts to stay and/or appeal such order;
- (3) an act of government, such as a declaration of national emergency, making material unavailable; or
- (4) unavoidable casualties or other similar causes as listed in Subparagraph 14.2.2(2) hereinbelow.

14.1.2 NOTICE. If one of the reasons for termination in 14.1.1 hereinabove exist, the Contractor may, upon ten (10) additional days' written notice to the Owner and Owner's Representative, and such condition giving cause for termination still not cured, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.2 TERMINATION BY THE OWNER FOR CAUSE.

14.2.1 IN GENERAL. The Owner may terminate the Contract if the Contractor fails to cure any of the following within a period of ten (10) days (or longer if the Owner so approves in writing) after receipt of notice from the Owner specifying the cause for termination:

- (1) The Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- (2) The Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- (3) The Contractor persistently disregards laws, ordinances, or rules, regulations, resolutions or orders of a public authority having jurisdiction; or
- (4) The Contractor fails to perform the Work within the time specified in the Contract Documents or any authorized extension thereof or the Contractor fails to make progress with the Work as to endanger such compliance;
- (5) The Contractor fails to perform the Work in accordance with the Contract Documents;
- (6) The Contractor fails to respond promptly to the financial responsibility inquiry under the Contractor's Agreement;
- (7) As permissible by law for a reason to terminate, the Contractor is adjudged bankrupt;
- (8) As permissible by law for a reason to terminate, the Contractor should make a general assignment for the benefit to creditors;
- (9) As permissible by law for a reason to terminate, the Contractor should have a receiver appointed on account of the Contractor's insolvency; or
- (10) The Contractor is in breach of a material provision of the Contract Documents.

14.2.2 OWNER'S RIGHT TO CARRY OUT THE WORK.

- (1) If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period (or longer if approved by the Owner in writing) after receipt of written notice from the Owner to cure such default or neglect, the Owner may without prejudice to other remedies the Owner may have, correct such deficiencies, including taking over the Work and prosecuting the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the Work, such materials, appliances and plant as may be on the site of the Work and necessary for its proper completion. In such case, the Owner shall offset from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner's Representative, Owner's staff and legal counsel's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor shall continue performance of the Contract to the extent not terminated.
- (2) Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor or anyone for whom the Contractor may be liable. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the state or federal government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor or anyone for whom the Contractor may be liable. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either of them or anyone for whom either may be liable, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery or completion schedule.

14.2.3 ITEMS REQUIRED TO BE TRANSFERRED OR DELIVERED. The Owner may require the Contractor to transfer title and deliver to the Owner, in the manner and to the extent directed by the Owner:

- (1) Any completed portion of the Work; and
- (2) Any partially completed portion of the Work and any parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Owner, protect and preserve property in the possession of the Contractor in which the Owner has an interest.

14.2.4 PAYMENT. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to further payment until the Work is completed. Payment for completed Work accepted by the Owner shall be at the Contract price. Payment for construction materials delivered to and accepted by the Owner and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Owner.

14.2.5 OWNER PROTECTION IF LIENABLE. When the subject property is lienable, the Owner may withhold from amounts otherwise due the Contractor for such completed Work or construction materials such sum as the Owner determines to be necessary to protect the Owner against loss because of outstanding liens or claims for former lien holders.

14.2.6 CREDITS AND DEFICITS. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Owner's Representative's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such cost exceeds the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Owner's Representative, upon application, and this obligation for payment shall survive the termination of the Contract.

14.2.7 IF CONTRACTOR FOUND NOT IN DEFAULT OR EXCUSABLE. If, after notice of termination of the Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience provisions.

14.2.8 RIGHTS AND REMEDIES NOT EXCLUSIVE. The rights and remedies of the Owner provided in this Paragraph 14.2 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

14.3 SUSPENSION, DELAY OR INTERRUPTION OF WORK BY THE OWNER FOR CONVENIENCE.

14.3.1 BY OWNER IN WRITING. The Owner may in writing and without cause, order the Contractor to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine to be appropriate for the convenience of the Owner.

14.3.2 TIME PERIOD FOR CLAIMS. Any Claim by the Contractor for adjustment under this Paragraph 14.3 must be asserted by the Contractor, in writing, within twenty-one (21) days from the date of termination of such suspension, delay or interruption; provided that the Owner may, in its sole discretion, receive and act upon any such Claim asserted at any time prior to final payment under this Contract.

14.3.3 ADJUSTMENTS. Any adjustment in Contract Sum and Time shall be in accordance with Articles 7 and 8.

14.4 TERMINATION FOR CONVENIENCE OF THE OWNER.

14.4.1 IN GENERAL. The performance of Work under this Contract may be terminated by the Owner in accordance with this Paragraph 14.4 in whole, or from time to time, in part, whenever the Owner shall determine

that such termination is in the best interest of the Owner or any person for whom the Owner is acting under this Contract. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

14.4.2 CONTRACTOR OBLIGATIONS. After receipt of a notice of termination, and except as otherwise directed by the Owner in writing, the Contractor shall:

- (1) Stop work under the Contract on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to performance of Work terminated by the notice of termination;
- (4) Assign to the Owner in the manner, at the times, and to the extent directed by the Owner, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, which approval or ratification shall be final for all the purposes of this Paragraph 14.4;
- (6) Transfer title and deliver to the Owner in the manner, at the times, and to the extent, if any, directed by the Owner:
 - (a) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and
 - (b) The completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Owner;
- (7) Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in Subparagraph 14.4.2(6) above; provided, however, that the Contractor:
 - (a) Shall not be required to extend credit to any purchaser; and
 - (b) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer of or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Owner may direct;
- (8) Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
- (9) Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor in which the Owner has or may acquire an interest.

14.4.3 TERMINATION CLAIM. After receipt of a notice of termination, the Contractor shall submit to the Owner a termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event not later than sixty (60) days from the effective date of termination.

14.4.4 AGREED UPON PAYMENT. Subject to the provisions of Paragraph 14.4.3 above, the Contractor and the Owner may agree upon the amount to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Paragraph 14.4.

14.4.5 PAYMENT NOT AGREED UPON. In the event of the failure of the Contractor and the Owner to agree, as provided in Subparagraph 14.4.4, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Paragraph 14.4, the Owner shall pay to the Contractor the amounts determined by the Owner as follows, but without duplication of any amounts agreed upon in accordance with Subparagraph 14.4.4:

- (1) With respect to all Contract Work performed prior to effective date of the notice of termination, the total (without duplication of any items) of:
 - (a) The cost of such Work including undisputed Claim amounts;
 - (b) The cost of terminating, settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in Subparagraph 14.4.2(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Subcontractors prior to the effective date of the notice of termination under this Contract, which amounts shall be included in the cost on account of which payment is made under 14.4.5(1)(a) above;
 - (c) A sum, as overhead and profit on 14.4.5(1)(a) above, determined by the Owner to be fair and reasonable;
 - (d) The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph 14.4.2(9); and any other reasonable cost incidental to termination of Work under this Contract, including expenses incidental to the determination of the amount due to the Contractor as the result of the termination of Work under this Contract.
- (2) The total sum to be paid to the Contractor under 14.4.5(1) above shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under 14.4.5(1) above, the fair value of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Subparagraph 14.4.2(7).

14.4.6 DEDUCTIONS. In arriving at the amount due the Contractor under this Paragraph 14.4, there shall be deducted:

- (1) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
- (2) Any Claim which the Owner may have against the Contractor in connection with this Contract; and
- (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

14.4.7 PARTIAL TERMINATION. If the termination hereunder be partial, the Contractor may file with the Owner a Claim for an equitable adjustment of the amounts specified in the Contract relating to the continued portion of the Contract and such equitable adjustment as may be agreed upon shall be made in such amounts. Any Claim by the Contractor for an equitable adjustment under this Subparagraph 14.4.7 must be filed within sixty (60) days from the effective date of the notice of termination.

14.4.8 PARTIAL PAYMENTS. The Owner may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever, in the opinion of the Owner the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Paragraph 14.4, such excess shall be payable by the Contractor to the Owner upon demand, together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period until the date such excess is repaid to the Owner; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Owner by reason of the circumstances.

14.4.9 PRESERVE AND MAKE AVAILABLE RECORDS. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to the Owner at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or, to the extent approved by the Contracting officer, photographs, micrographs, or other authentic reproductions thereof.

14.5 OWNERS RIGHT TO STOP THE WORK.

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

PROJECT SPECIFICATIONS AND SPECIAL PROVISIONS

TECHNICAL SPECIFICATIONS

See APWA Manual Of Standard Specifications, 2025 Edition.

STANDARD DRAWINGS

See APWA Manual Of Standard Plans, 2025 Edition.

SPECIAL PROVISIONS:

- 1- Contractor shall be responsible for all staking/surveying needs.
- 2- The Owner has made an attempt to identify potential utility conflicts within the project. It is the responsibility of the Contractor to verify and identify any utility conflicts, and coordinate with the utility owner/operator to have the conflict resolved.
- 3- Any closure of an access to a residence or a business shall be coordinated with the property owner, and permission granted from the property owner, before any work can commence at the access location.
- 4- Contractor shall notify all residents a minimum of 24 hours prior to any road closures, utility interruptions, or property disturbances.
- 5- Final quantities and project work portions will be dependent upon bids and the final project budgets.
- 6- The Contractor is responsible for all fees and costs associated with solid waste collection and disposal services.
- 7- The Contractor shall give at least 48 hours advance notification of commencement of construction to property owners having land on which construction will take place. During all construction operations, the Contractor shall construct and maintain such facilities as may be required to provide access by all property owners to their property. No one shall be cut off from access to their property for a period exceeding eight (8) hours unless the Contractor has made special arrangements with the affected persons.
- 8- The Contractor shall grade all disturbed surfaces required for motor vehicle traffic at least daily unless directed otherwise in the Contract Documents or in writing by the Owners Representative. Fire hydrants on or adjacent to the Work shall be kept accessible at all times. Appropriate measures shall be taken by the Contractor, to assure the use of sidewalks, and the proper functioning of all gutters, sewer inlets, water mains, drainage facilities, and other infrastructure.
- 9- The Contractor's responsibility for Work safety or liability for Work site accidents is not lessened by the presence of the Owners Representative or his or another inspector performing monitoring of Work site safety conditions.
- 10- The Contractor's use of the Work site shall be limited to its construction operations. Written approval by the Owner's Representative will be required for any other use of the site, such as material and equipment storage, personnel vehicle parking, on-site fabrication facilities and field office.

- 11- If a suspected or unsuspected historic, archeological, or paleontological item, feature, or site is encountered, construction operations shall be immediately stopped in the vicinity of the discovery and the Owners Representative shall be notified of the nature and exact location of the findings. The Contractor shall not damage the discovered objects and shall provide written confirmation of the discovery to the Owners Representative within two (2) calendar days.
- 12- All property removed or relocated by the Work shall be reconstructed in its original or new location as soon as possible. Restoration of existing property or facilities shall be to a condition as good as or better than its original condition and all costs related thereto shall be borne by the Contractor.
- 13- All property damaged by the Contractor, whether inside or outside the limits of property or easements provided by the Owner, shall be the responsibility of the Contractor. All such damages shall be repaired with like material and restored to its original condition, or better. Such repair or restoration shall be accomplished at the Contractor's expense without additional compensation from the Owner.
- 14- When construction easements have been obtained by the Owner, the Contractor shall take appropriate measures to minimize disturbances to surface improvements within these easements. The Contractor shall obtain a written release from each property owner on whose property work has been required by these Contract Documents. Such release shall indicate the property Owner's approval of the restoration and/or replacement of all disturbed improvements, surfaces and structures. Any request made to the Contractor by a private property owner, and determined to be unreasonable in the opinion of the Owners Representative, may be waived by the Owner.
- 15- The Contractor shall confine construction operations to the area within the dedicated rights-of-way for public thoroughfares, or within areas for which construction easements have been obtained, unless the Contractor has made separate special agreements with the affected property owners in advance and has provided copies of the same to the Owner's Representative prior to construction activities.
- 16- The Contractor shall employ sufficient labor and equipment with adequate training and capability for executing the Work to full completion in the manner and time required by these Specifications.
- 17- All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have appropriate training and sufficient experience in such work, in the opinion of the Owner, to perform all work properly and satisfactorily.
- 18- All equipment, which is proposed to be used on the Work, shall be of sufficient size and in such mechanical condition, in the opinion of the Owners Representative, as to produce a satisfactory quality of Work. Equipment used on any portion of the Work shall be fitted with appropriate protective devices in accordance with OSHA and other applicable safety regulations such that no injury to employees, the Work, or to adjacent property will result from its use.
- 19- Unless otherwise required by these Special Provisions, partial acceptance of any portion of the Work will not be made. While Substantial Completion notice can be issued in accordance with the General Conditions to allow use of completed work for its intended purpose, no acceptance other than the final acceptance of all completed

work will be made. No inspection or approval or Notice of Substantial Completion pertaining to specific parts of the work shall be construed as final acceptance of any part until written final acceptance of all work is issued.