City of Lafayette

2013

CITY WIDE STREET REHABILITATION

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost:$
Acct. or P.O. # 34-301-9321

City of Lafayette

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INVITATION TO BID

I. RECEIPT OF BIDS

Sealed Proposals will be received by the City of Lafayette, 1290 South Public Road, Lafayette, Colorado 80026 until 10:00 a.m. local prevailing time on August 16, 2013 for the construction of a certain public building and/or public works in accordance with the Plans, Contract Documents and Specifications prepared by the City of Lafayette.

II. DESCRIPTION OF WORK

Please see the Construction Drawings for a map of each location of work. It is the intent of this list to give the general location and extent of the work to be performed under this contract. The final designation of locations and extent will be verified after the contract has been awarded. The City of Lafayette reserves the right to alter the total quantity (both increase and decrease) from that shown in the Contract Documents. Such quantity alteration will not change the unit price of the accepted Contract.

The Work includes (with approximate quantities), but is not necessarily limited to furnishing labor, materials and equipment for the construction of the following:

1. Mobilization
2. Asphalt Pavement Removal- Full Width Mill, 39,030 square yards (2.5” depth)
3. Asphalt Pavement Removal- Patch Mill, 325 square yards (2.5” depth)
4. Asphalt Pavement Overlay, 5461 tons (2.5” thickness)
5. Remove & Replace Asphalt Pavement, 1768 tons (full depth, average 6” depth)
6. Sub-Grade Reconstruction, 570 cubic yards of Class 6 Base Course
7. Petrotac® Pavement Repair Membrane, 2040 linear feet (12” width)
8. Lane Striping, 17,920 linear feet
9. Pavement Markings, 520 square feet
10. Traffic Control, 26 days

All areas as described in the **2013 City Wide Street Rehabilitation Maps** are to be marked by City of Lafayette. This includes but is not limited to milling, patch, and overlay work. Extent of Aggregate Base Course and ‘Extra’ work to be determined by Engineer after contract award and during progress of patching and overlay work.

III. DOCUMENT INSPECTION AND PROCUREMENT

The Contract Documents may be inspected at the following locations:

City of Lafayette
Department of Public Works
1290 South Public Road
Lafayette, Colorado 80026

City of Lafayette Web Page
http://www.cityoflafayette.com/bids

Contract Documents may be obtained from the City of Lafayette via email. To obtain a copy of the Contract Documents, please go to www.cityoflafayette.com/bids or contact Brad Dallam at bradd@cityoflafayette.com, or visit Lafayette City Hall at 1290 South Public Road after 10:00 a.m., July 29, 2013. The contact is available in PDF format. **YOU SHALL PAY A $10.00 NON-REFUNDABLE FEE TO THE CITY OF LAFAYETTE IN ORDER TO BE INCLUDED ON THE BIDDERS LIST**. The City will not accept bids from any person or company not listed on the bidders list. No partial sets of Contract Documents will be issued. If you do not have email a set will be printed for you at cost of a local copy store

Questions regarding the documents may be directed to City of Lafayette Public Works Department at (303) 665-5588 x3328.

IV. BONDS

Each bid shall be accompanied by a bid guarantee bond, or a certified or cashier's check payable to the order of the City of Lafayette in an amount not less than five (5) percent of the amount of the bid as a guarantee that the bidder will execute the Contract, if awarded, in conformity with the bid form.

The bidder to whom a Contract is awarded shall be required to furnish both a Performance Bond and Payment Bond acceptable to the City of Lafayette for 100% of the Contract Price for each bond, in accordance with the requirements of the Contract Documents.

V. CONTRACT AWARD

The Contract will be awarded or bids rejected no earlier than August 20, 2013. The City of Lafayette may reject any and all bids. The City of Lafayette reserves the right to reject any and all Bids, waive any informalities in bidding or to accept the Bid or Bids, that best serve the interest of the City.

VI. SCHEDULE

Time for completion of the Work as proposed by the Contractor will be as required in the Contract Documents. While not a commitment, the current schedule calls for award of the Contract on or about August 20, 2013. The Contract Time shall commence to run on the date specified in the Notice to Proceed. The Contract Time will be seventy five (75) calendar days.

VII. PRE-BID CONFERENCE

A pre-bid conference will be held at the City of Lafayette on August 9, 2013 at 10:00 a.m. Bidders are invited to attend and voice questions regarding the Contract Documents.

CITY OF LAFAYETTE

_____

Bradley S. Dallam, P.E.
Assistant City Engineer

Project ; 2013 City Wide Street Rehabilitation
Contractor:
Design Professional: City of Lafayette
Total Cost:
Term:
Acct. or P.O. #
Bond No. _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS: that [insert name and address of Contractor]

_____
_____
_____
_____

as Principal, hereinafter called CONTRACTOR, and [insert name and address of Surety]

_____
_____
_____
_____

as Surety, hereinafter called SURETY, are held and firmly bond unto

City of Lafayette
1290 S. Public Road
Lafayette, CO 80026

as Obligee, hereinafter called CITY, in the amount of _____ Dollars ($_____), for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has submitted a Bid dated _____, 20__, in accordance with the Invitation to Bid issued by CITY, which Bid is by reference made a part hereof, and is hereinafter referred to as the Bid.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly comply with all requirements of the Notice of Award dated _____, 20__, then this obligation shall be null and void; otherwise, the amount of this Bond shall be paid to the CITY upon demand.

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

[CONTRACTOR]	[SURETY]
_____	_____
[Name, Title]	[Name, Title]
ATTTEST:	ATTEST:
_____	_____
[Title]	[Title]

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost:$
Acct. or P.O. # 34-301-9321

CONTRACTOR'S BID

I. The following Proposal is hereby made to:

City of Lafayette
1290 S. Public Road
Lafayette, Colorado 80026

II. STIPULATED AMOUNT

The undersigned hereby propose and agree to furnish all the necessary labor, material, equipment, tools, and services necessary for the construction of the **2013 City Wide Street Rehabilitation** for the City of Lafayette all in accordance with the Contract Documents prepared by the City of Lafayette Department of Public Works for the following stipulated amount: _____ ($) based on unit prices.

III. KNOWLEDGE OF LOCAL CONDITIONS AND CONTRACT DOCUMENTS

The undersigned has examined the location of the proposed work, as well as Contract Documents and is familiar with the local conditions present where the work is to be performed.

IV. PROPOSAL GUARANTY

The Proposal Guaranty attached, without endorsement, in the sum of not less than five percent (5%) of the amount of the Proposal, is furnished to the OWNER as a guarantee that the Agreement will be executed and a Performance Bond and a Payment Bond will be furnished within five(5) Business Days after award of the Contract to the undersigned, or that the undersigned will pay to the OWNER the difference between the stipulated amount of this Contractor's Bid and such larger amount for which the OWNER may in good faith contract with another party to perform the work covered by this Proposal, provided that such payment shall be limited to the amount of the Proposal Guaranty.

V. EXECUTION OF AGREEMENT AND FURNISHING BONDS

Within five (5) Business Days after being awarded the Contract, the undersigned agrees to execute the form of Agreement included in Contract Documents, and to furnish a Performance Bond and Payment Bond, both in an amount equal to one hundred percent (100%) of the Contract amount on the forms provided in these documents.

VI. ADDENDA

The undersigned hereby acknowledges receipt of the following Addenda:

Addendum No.	Dated
_____	_____
_____	_____
_____	_____
_____	_____

VII. STATEMENT OF ITEMS

Item No.	Description, Approximate Quantity and Unit Price	Amount of Bid

1. MOBILIZATION

1 L.S. x $_____ = $_____
(Total)

_____
(Words – Lump Sum Price)

2. ASPHALT REMOVAL- FULL WIDTH MILL (2.5" DEPTH)

39,030 S.Y. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

3. ASPHALT REMOVAL- PATCH MILL (2.5" DEPTH)

325 S.Y. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

4. ASPHALT PAVEMENT OVERLAY (2.5" THICKNESS)

5461 TONS x $_____ = $_____
(Total)

_____
(Words – Unit Price)

5. REMOVE & REPLACE ASPHALT PAVEMENT (FULL DEPTH)

1768 TONS x $_____ = $_____
(Total)

_____
(Words – Unit Price)

6. SUB-GRADE RECONSTRUCTION (CLASS 6 BASE COURSE)

550 C.Y. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

7. PETEROTAC® PAVEMENT REPAIR MEMBRANE (12" WIDTH)

2040 L.F. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

8. LANE STRIPING

17,920 L.F. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

9. PAVEMENT MARKINGS

520 S.F. x $_____ = $_____
(Total)

_____
(Words – Unit Price)

10. TRAFFIC CONTROL

26 DAYS x $_____ = $_____
(Total)

_____
(Words – Unit Price)

VIII. CONTRACT TIME

All work shall be completed by within seventy five (75) calendar days after the issuance of the Notice to Proceed. The OWNER anticipates issuance of the Notice to Proceed within ten (10) calendar days from the date of the Notice of Award.

Furthermore, the Bidder agrees that failure to complete the Contract within the time proposed, including any extension thereof, shall be considered a breach of the Contract, and entitles the OWNER to liquidated damages as specified in Article 3 of the Construction Contract.

IX. OWNER'S RIGHT RESERVED

The undersigned understands that the OWNER reserves the right to reject any or all Proposals and to waive any formality or technicality in any Proposal in the interest of the OWNER.

X. THE ABOVE PROPOSAL IS HEREBY RESPECTFULLY SUBMITTED BY:

CONTRACTOR

Business Name _____

☐ an individual, ☐ a Colorado corporation, ☐ a Colorado partnership, ■ a Colorado limited liability company, ☐ a _____, as independent contractor.

Business Address

City_____ State__CO___ Zip Code_____

By_____ Title_____

Date_____

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost:$
Acct. or P.O. # 34-301-9321

NOTICE OF AWARD

Dated: _____

To:

Owner: City of Lafayette ("CITY")

You are hereby notified that your Bid dated August 16, 2013, for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract:

☑for the total Work for the Project.

☐ for construction of :

2013 City Wide Street Rehabilitation

The Contract Price of your Contract is _____ _____ (_____).

Copies of each of the proposed Contract Documents (except Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, and City of Lafayette's Standards and Specifications) accompany this Notice of Award. 3 sets of all remaining Contract Documents will be delivered separately at the time of the Pre-Construction Conference, scheduled for _____.

You must comply with the following conditions precedent within five (5) business days of this Notice of Award, that is by _____.

1. You must deliver to CITY two fully executed counterparts of the Construction Contract, including all the Contract Documents. Each of the Contract Documents must bear your

signature on the cover of each Contract Document and where specified throughout each Document.

2. You must deliver with the executed Construction Contract, the Bonds and Certificates of Insurance as specified in Article V of the General Conditions and Supplementary Conditions.

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

Within ten (10) days after you comply with the above conditions, CITY will return to you one fully signed counterpart of the Construction Contract with the Contract Documents attached.

CITY OF LAFAYETTE

_____
Mayor

Acceptance of Award:

_____
Contractor

Attest:

_____
City Clerk

Copy to Design Professional

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost
Acct. or P.O. # 34-301-9321

CONSTRUCTION CONTRACT

THIS AGREEMENT ("Agreement") is dated as of the ____ day of August , 2013, by and between the City of Lafayette, Colorado, a Colorado home rule city and municipal corporation, (hereinafter called CITY), and_____, whose address is _____, (hereinafter called CONTRACTOR). CONTRACTOR agrees to work for CITY as an independent contractor, on the following terms and conditions contained in this Agreement.

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

ARTICLE 1
WORK

1.1. "Project": The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2013 City Wide Street Rehabilitation

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

Asphalt pavement repairs throughout the city.

1.3. "Site": The Site is the place where the Project is located, generally located throughout the city as shown on the **2013 City Wide Street Rehabilitation Maps 1 through 43.**

ARTICLE 2
DESIGN PROFESSIONAL

This Project has been designed by: City of Lafayette Engineering Division who is hereinafter called DESIGN PROFESSIONAL and who is to act as CITY's representative, assume all duties and responsibilities and have the rights and authority assigned to DESIGN PROFESSIONAL in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3
CONTRACT TIMES

3.1. The Work will be substantially completed within 75 days after the date when the Contract Times commence to run as provided in paragraph 2.3. of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.9. of the General Conditions within 80 days after the date when the Contract Times commence to run.

3.2. *Liquidated Damages*: CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that CITY will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1. above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY two hundred dollars ($200.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY two hundred dollars ($200.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment or after actual Substantial Completion, whichever is later. Liquidated damages for delay in reaching substantial completion and liquidated damages for delay in reaching completion and readiness for final payment shall not accrue simultaneously.

ARTICLE 4
CONTRACT PRICE

CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and 4.2. below:

4.1. (**section not used**) for all work other than Unit Price Work, a Lump Sum of:

_____ ($_____)
(use words) figures

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.8. of the General Conditions; plus

4.2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.:

UNIT PRICE WORK

NO.	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	ESTIMATED COST
1	Mobilization	LS	1		
2	Asphalt Removal- Full Width Mill	SY	39,030		
3	Asphalt Removal- Patch Mill	SY	325		
4	Asphalt Pavement Overlay	TON	5461		
5	Remove & Replace Asphalt Pavement	TON	1,768		
6	Sub-Grade Reconstruction	CY	570		
7	Petrotac® Pavement Repair Membrane	LF	2,040		
8	Lane Striping	LF	17,920		
9	Pavement Markings	SF	520		
10	Traffic Control	Day	26		

TOTAL COST _____($)

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of the actual quantities and classifications are to be made by DESIGN PROFESSIONAL as provided in paragraph 9.8 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.

4.3. CITY has appropriated funds equal to or in excess of the Contract Price.

ARTICLE 5
PAYMENT PROCEDURES

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

5.1. *Progress Payments; Retainage*: CITY shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by DESIGN PROFESSIONAL, on or about the _____ day of each month during construction as provided herein. All such payments will be measured by the schedule of values established in paragraph 2.7 of the General Conditions (and in the case of Unit Price Work, based on the number of units completed) or, in the event there is no schedule of values, as provided in the Specifications.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as DESIGN PROFESSIONAL shall

determine, or CITY may withhold, in accordance with paragraph 14.4.4 of the General Conditions:

- 95% of Work completed (with the balance being retainage). The withheld percentage of the contract price shall be retained until the contract is completed satisfactorily and finally accepted by CITY.

- 95% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to CITY as provided in paragraph 14.2. of the General Conditions).

5.1.2. Upon Substantial Completion, payments shall be made in an amount sufficient to increase total payments to CONTRACTOR to at least 95% of the Contract Price, if in the opinion of the CITY, satisfactory progress had been made in the Work, (with the balance being retainage), less such amounts as DESIGN PROFESSIONAL shall determine, or CITY may withhold, in accordance with paragraph 14.4.4 of the General Conditions.

5.1.3. Whenever CONTRACTOR receives payment pursuant to this paragraph 5.1., CONTRACTOR shall make payments to each of its Subcontractors of any amounts actually received that were included in CONTRACTOR's request for payment to CITY for such Subcontracts. CONTRACTOR shall make such payments within seven calendar days of receipt of payment from CITY in the same manner as CITY is required to pay CONTRACTOR pursuant to this paragraph 5.1 if the Subcontractor is satisfactorily performing under its contract with CONTRACTOR. CONTRACTOR shall be relieved of the requirements of this paragraph regarding payment in seven days and the payment of interest until its Subcontractor submits the list required by paragraph 5.1.4 Nothing in this paragraph 5.1.3 shall be construed to affect the retention provisions of this Agreement.

5.1.4. CONTRACTOR shall include a provision in all of its subcontracts requiring its Subcontractors to pay all Suppliers, sub-subcontactors, and laborers any amounts actually received that were included in the Subcontractor's request for payment to CONTRACTOR for such persons, in the same manner set forth in this paragraph 5.1 regarding payments by CONTRACTOR to the Subcontractor. Further, all said subcontracts shall include a provision that at the time the Subcontractor submits a request for payment to the CONTRACTOR, the Subcontractor shall also submit to the CONTRACTOR a list of the Subcontractor's Suppliers, sub-subcontractors, and laborers.

5.2. *Final Payment*: Upon final completion and acceptance of the Work in accordance with paragraph 14.9 of the General Conditions, CITY shall pay the remainder of the Contract Price as recommended by DESIGN PROFESSIONAL as provided in said paragraph 14.9.

5.3. *No Lien Rights:* CONTRACTOR understands that this is a contract for the construction or repair of a public building or public work, and is therefore governed by C.R.S. §§ 38-26-105 through 107. CONTRACTOR further understands that these statutory provisions are

in lieu of any lien rights. CONTRACTOR further understands that failure on the part of CONTRACTOR, any Subcontractor, Supplier, sub-subcontractor or laborer furnishing labor or supplies to the Work must follow the said statutory provisions in filing any claim for payment, and that failure on the part of any such claimant to comply with said statutory requirements shall relieve CITY from any liability for making payment to such claimant. CONTRACTOR agrees to include this provision in any and all subcontracts.

ARTICLE 6
INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at a rate not to exceed 15%

ARTICLE 7
CONTRACTOR'S REPRESENTATIONS

In order to induce CITY to enter into this Agreement, CONTRACTOR makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8 herein) and the other related data identified in the Bidding Documents, including "technical data."

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

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

7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2. of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that CITY and DESIGN PROFESSIONAL do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost,

progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

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

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

7.7. CONTRACTOR has given DESIGN PROFESSIONAL written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by DESIGN PROFESSIONAL is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8
CONTRACT DOCUMENTS

The Contract Documents that comprise the entire agreement between CITY and CONTRACTOR concerning the Work consist of the following:

8.1. This Agreement (pages 1 to 11, inclusive).

8.2. Drawings (Under the title of 2013 City Wide Street Rehabilitation Sheets 1 of 43 to 43 of 43, inclusive).

8.3. Supplementary Conditions (pages SC-1 to SC-5, inclusive).

8.4. General Conditions (pages GC-1 to GC-57, inclusive).

8.5. Specifications bearing the title Standard Specifications (pages SS-1 to SS-6, inclusive).

8.6. Performance, Payment, and other Bonds, consisting of 12 pages.

8.7. Notice to Proceed.

8.8. Addenda numbers _____ to _____.

8.9. CONTRACTOR'S Bid (pages 1 to 3, inclusive).

8.10 Special Provisions (Pages SP - 1 to SP – 9, inclusive).

The following documents that may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.4. and 3.5. of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

ARTICLE 9
MISCELLANEOUS

9.1. Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses are provided for convenience only.

Lafayette:	City of Lafayette 1290 South Public Road Lafayette, Colorado 80026 Attn: Brad Dallam, P.E. Telephone: (303)665-5588 x3326 Facsimile: (303)665-2153 E-mail: bradd@cityoflafayette.com	Contractor:	 Attn: Telephone: Facsimile: E-mail:

9.2. Terms used in this Agreement that are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

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

9.4. This Agreement is between CITY and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.

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

9.6. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, CITY's obligations under this Agreement are subject to annual appropriation by the City Council of the CITY. Any failure of the City Council annually to appropriate adequate funds to finance CITY's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.

9.7. This Agreement is to be governed by the laws of the State of Colorado. Venue for any legal proceeding under this Agreement shall be in Boulder County, Colorado.

9.8. This Agreement may only be amended, supplemented, or modified in a written document signed by both parties.

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

9.10. In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

9.11. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the CITY shall not constitute a waiver of any of the other terms or obligations of this Agreement.

9.12. Section not used

.

9.13. *Immigration Status Obligations*:

(a) CONTRACTOR certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the CONTRACTOR will participate in the United States Government's E-Verify Program or the State of Colorado

Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(b) CONTRACTOR shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(c) CONTRACTOR shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

(d) CONTRACTOR is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

(e) If CONTRACTOR obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, CONTRACTOR shall be required to:

(1) Notify the subcontractor and the CITY within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if, within three days of receiving the certification required pursuant to sub-subparagraph (b)(2) of this section, the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(f) CONTRACTOR shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et seq., as amended from time to time.

(g) If CONTRACTOR violates any of the provisions set forth in this section, the CITY may terminate the Agreement and CONTRACTOR shall be liable for all actual and consequential damages incurred by the CITY.

9.14. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

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

This Agreement will be effective on _____, 20___.

*****EXECUTION PAGE FOLLOWS*****

CITY OF LAFAYETTE

_____
Mayor

ATTTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

[CONTRACTOR]

_____
[Name, Title]

ATTEST:

_____
[Title]

License No. _____

Agent for service of process: _____

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost:$
Acct. or P.O. # 34-301-9321
Bond No.:

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that [insert name and address of Contractor]

_____
_____
_____
_____

as Principal, hereinafter called CONTRACTOR, and [insert name and address of Surety]

_____
_____
_____
_____

as Surety, hereinafter called SURETY, are held and firmly bond unto

City of Lafayette
1290 S. Public Road
Lafayette, CO 80026

as Obligee, hereinafter called CITY, in the amount of _____ Dollars ($_____), for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 20__, entered into a Construction Contract with CITY for the following Project:

2013 City Wide Street Rehabilitation

in accordance with Drawings and Specifications prepared by City of Lafayette, DESIGN PROFESSIONAL, whose address is: 1290 South Public Road, Lafayette CO 80026, which contract is by reference made a part hereof, and is hereinafter referred to as the Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the CONTRACTOR performs the Construction Contract, then this obligation shall be null and void; otherwise, the SURETY and the CONTRACTOR shall have the following obligations:

1. If CITY is not in Default under the Construction Contract, SURETY's obligation under this Bond shall arise after:

1.1 CITY has notified CONTRACTOR and SURETY at its address listed on the first page hereof that CITY by seven days' written notice intends to terminate the services of CONTRACTOR or otherwise declare CONTRACTOR to be in Default of its obligations under the Construction Contract; and

1.2 CITY has declared CONTRACTOR to be in Default and formally terminated CONTRACTOR's right to complete the Construction Contract; and

1.3 CITY has agreed to pay the Unpaid Balance of the Contract Price to SURETY in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the Construction Contract with CITY.

2. When CITY has satisfied the conditions of paragraph 1, SURETY shall promptly and at SURETY's expense take one of the following actions:

2.1 Arrange for CONTRACTOR, with consent of the CITY, to perform and complete the Construction Contract; or

2.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

2.3 Obtain bids or negotiated proposals from qualified contractors acceptable to CITY for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by CITY and the contractor selected with CITY's concurrence, to be secured with the performance and payment bonds executed by a qualified Surety equivalent to the Bonds issued on the Construction Contract, and paid to CITY the amount of damages as described in paragraph 4 in excess of the Unpaid Balance of the Contract Price incurred by CITY resulting from the CONTRACTOR's Default; or

2.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, after investigation, determine the amount for which it is liable to CITY and, as soon as practicable after the amount is determined and approved by CITY, tender payment therefore to CITY.

3. If SURETY does not proceed as provided in paragraph 2 with reasonable promptness, SURETY shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from CITY to SURETY demanding that SURETY perform its

obligations under this Bond, and CITY shall be entitled to enforce any remedy available to CITY. If SURETY proceeds as provided in subparagraph 2.4 and CITY refuses the payment tendered or SURETY has denied liability, in whole or in part, without further notice, CITY shall be entitled to enforce any remedy available to CITY.

4. After CITY has terminated CONTRACTOR's right to complete the Construction Contract, and if SURETY elects to act under subparagraph 2.1, 2.2, or 2.3 above, then the responsibilities of SURETY to CITY shall not be greater than those of CONTRACTOR under the Construction Contract, and the responsibilities of CITY to SURETY shall not be greater than those of CITY under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by CITY of the unpaid balance of the Contract Price to mitigation of costs and damages on the Construction Contract, SURETY is obligated without duplication for:

4.1 The responsibilities of CONTRACTOR for correction of defective work and completion of the Construction Contract; and

4.2 Additional legal, design professional and delay costs resulting from CONTRACTOR's Default, and resulting from the actions or failure to act of SURETY under paragraph 2; and

4.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of CONTRACTOR.

5. SURETY hereby waives notice of any change, including changes to the Contract Times, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

6. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CITY declares CONTRACTOR to be in default or within two years after CONTRACTOR ceased working or within two years after SURETY refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

7. Any notice to the parties required under this Bond shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses are provided for convenience only.

Lafayette:	City of Lafayette 1290 South Public Road Lafayette, Colorado 80026 Attn: Brad Dallam, P.E. Telephone: (303)665-5588 x3326 Facsimile: (303)665-2153 E-mail: bradd@cityoflafayette.com	Contractor:	_____ _____ _____ Attn:_____ Telephone:_____ Facsimile:_____ E-mail:_____

Surety: _____
_____
_____
Attn:_____
Telephone:_____
Facsimile: _____
E-mail:_____

8. This Bond is to be governed by the laws of the State of Colorado.

9. Definitions.

9.1 Unpaid Balance of the Contract Price: The total amount payable by CITY to CONTRACTOR under the Construction Contract after all proper adjustments have been made, including allowance to CONTRACTOR of any amounts received or to be received by CITY in settlement of insurance or other claims for damages to which CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of CONTRACTOR under the Construction Contract.

9.2 Construction Contract: The agreement between CITY and CONTRACTOR identified on the first page hereof, including all Contract Documents and changes thereto.

9.3 Default: Failure of the CONTRACTOR or CITY, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

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

[CONTRACTOR]	[SURETY]
_____	_____
[Name, Title]	[Name, Title]
ATTTEST:	ATTEST:
_____	_____
[Title]	[Title]

Project: 2013 City Wide Concrete Repair
Design Professional: City of Lafayette
Total Cost:
Term:
Acct. or P.O. #
Bond No.:

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that [insert name and address of Contractor]

_____
_____
_____
_____

as Principal, hereinafter called CONTRACTOR, and [insert name and address of Surety]

_____
_____
_____
_____

as Surety, hereinafter called SURETY, are held and firmly bond unto

City of Lafayette
1290 S. Public Road
Lafayette, CO 80026

as Obligee, hereinafter called CITY, in the amount of _____ Dollars ($_____), whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, to CITY to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, entered into between CONTRACTOR and CITY, dated _____, 20__, for the following Project:

2013 City Wide Street Rehabilitation

in accordance with Drawings and Specifications prepared by City of Lafayette, DESIGN PROFESSIONAL, whose address is: 1290 South Public Road, Lafayette CO 80026, which contract is by reference made a part hereof, and is hereinafter referred to as the Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that:

1. With respect to CITY this obligation shall be null and void if CONTRACTOR:

1.1 promptly makes payment, directly or indirectly, for all sums due Claimants, and

1.2 defends, indemnifies and holds harmless CITY from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided that CITY has promptly notified CONTRACTOR and SURETY (at the address listed on the first page hereof) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to CONTRACTOR and SURETY, and provided there is no CITY Default with respect to such claims, demands, liens or suits, whether or not any Claimant has fully complied with the provisions of the Construction Documents relating to verified claims.

2. With respect to Claimants, this obligation shall be null and void if CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

3. SURETY shall have no obligation to Claimants under this Bond until:

3.1 Claimants who are employed by or have a direct contract with CONTRACTOR have given notice to SURETY (at the address listed on the first page hereof) and sent a copy, or notice thereof, to CITY, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

3.2 Claimants who do not have a direct contract with CONTRACTOR:

3.2.1 have furnished written notice to CONTRACTOR and sent a copy, or notice thereof to CITY, up to and including the date of final settlement under the Construction Contract, stating with substantial accuracy the amount of the claim and the name of the party to whom materials were furnished or supplied or for whom labor was done or performed; and

3.2.2 have either received a rejection in whole or in part from CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from CONTRACTOR by which CONTRACTOR has indicated the claim will be paid directly or indirectly; and

3.2.3 not having been paid within the above 30 days, have sent a written notice to SURETY (at the address listed on the first page hereof) and sent a copy, or notice thereof, to CITY, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to CONTRACTOR.

4. If a notice required by paragraph 3 is given by CITY to CONTRACTOR or to SURETY, that is sufficient compliance.

5. When a Claimant has satisfied the conditions of paragraph 3, SURETY shall promptly and at SURETY's expense take the following actions:

5.1 send an answer to the Claimant, with a copy to CITY, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

5.2 pay or arrange for payment of any undisputed amounts.

6. SURETY's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by SURETY.

7. Amount owed by CITY to CONTRACTOR under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Construction Performance Bond. By CONTRACTOR's furnishing and CITY's accepting this Bond, they agree that all funds earned by CONTRACTOR in the performance of the Construction Contract are dedicated to satisfy obligations of CONTRACTOR and SURETY under this Bond, subject to CITY's priority to use the funds for the completion of the Work.

8. CITY shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

9. SURETY hereby waives notice of any change, including changes to the Contract Times, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CITY declares CONTRACTOR to be in default or within two years after CONTRACTOR ceased working or within two years after SURETY refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

11. Any notice to the parties required under this Bond shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses are provided for convenience only.

Lafayette:	City of Lafayette 1290 South Public Road Lafayette, Colorado 80026 Attn: Brad Dallam, P.E. Telephone: (303)665-5588 x3326 Facsimile: (303)665- 2153 E-mail:brad@cityoflafayette.com	Contractor:	_____ _____ _____ Attn:_____ Telephone:_____ Facsimile:_____ E-mail:_____

Surety: _____
_____
_____
Attn:_____
Telephone:_____
Facsimile: _____
E-mail:_____

12. This Bond is to be governed by the laws of the State of Colorado.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

14. Definitions.

14.1 Claimant: Any person, partnership, or corporation, or other entity that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by CONTRACTOR or its Subcontractor in or about the performance of the Work under the Construction Contract, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work, or architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors.

14.2 Construction Contract: The agreement between CITY and CONTRACTOR identified on the first page hereof, including all Contract Documents and changes thereto.

14.3 Default: Failure of the CONTRACTOR or CITY, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

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

[CONTRACTOR]	[SURETY]
_____	_____
[Name, Title]	[Name, Title]
ATTTEST:	ATTEST:
_____	_____
[Title]	[Title]

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette Engineering
Contractor:
Total Cost:$
Acct. #34-301-9321

NOTICE TO PROCEED

Dated: _____, 2013

To:

You are hereby notified that the Contract Times under the above Construction Contract will commence to run on _____. On that date, you are to begin performing the Work in accordance with the Contract Documents and you are to complete the Work within 75 Calendar Days thereafter.

Before you may start any Work at the site, you must submit to the OWNER the:

Construction Schedule
Material Specifications
Traffic Control Plan

CITY OF LAFAYETTE

_____
Bradley S. Dallam, P.E.
Assistant City Engineer

Acceptance of Award:

_____
Contractor

Copy to Design Professional

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette Engineering
Contractor:
Total Cost:$
Acct. #34-301-9321

CONSTRUCTION CONTRACT

General Conditions

CITY OF LAFAYETTE	CONTRACTOR
_____	_____
Mayor	[Name, Title]
Attest:	Attest:
_____	_____
City Clerk	[Title]

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GENERAL CONDITIONS

ARTICLE 1
DEFINITIONS

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

1.1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Bidding Requirements or the Contract Documents.

1.2. *Agreement*—The written contract between CITY and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3. *Application for Payment*—The CITY approved form accepted by DESIGN PROFESSIONAL that is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4. *Asbestos*—Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

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

1.6. *Bidding Documents*—The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.7. *Bidding Requirements*—The advertisement or invitation to Bid, instructions to bidders, and the Bid form.

1.8. *Bonds*—Performance and Payment bonds and other instruments of security.

1.9. *Change Order*—A document recommended by DESIGN PROFESSIONAL, that is signed by CONTRACTOR and CITY and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.10. *CITY*—The City of Lafayette.

1.11. *Contract Documents*—The Agreement, Addenda (that pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any

post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and DESIGN PROFESSIONAL's written interpretations and clarifications issued pursuant to paragraphs 3.4., 3.5.1., and 3.5.3. on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.17.4. and 6.17.5. and the reports and drawings referred to in paragraphs 4.2.1.1. and 4.2.1.2. are not Contract Documents.

1.12. *Contract Price*—The moneys payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1. in the case of Unit Price Work).

1.13. *Contract Times*—The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by DESIGN PROFESSIONAL's written recommendation of final payment in accordance with paragraph 14.9.1.

1.14. *CONTRACTOR*—The person, firm or corporation with whom CITY has entered into the Agreement.

1.15. *Defective*—An adjective that when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to DESIGN PROFESSIONAL's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with paragraph 14.5. or 14.6.).

1.16. *DESIGN PROFESSIONAL*—The person, firm or corporation named as such in the Agreement.

1.17. *DESIGN PROFESSIONAL's Consultant*—A person, firm or corporation having a contract with DESIGN PROFESSIONAL to furnish services as DESIGN PROFESSIONAL's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.18. *Drawings*—The drawings that show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and that have been prepared or approved by DESIGN PROFESSIONAL and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

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

1.20. *Field Order*—A written order issued by DESIGN PROFESSIONAL that orders minor changes in the Work in accordance with paragraph 9.5. but that does not involve a change in the Contract Price or the Contract Times.

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

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

1.23. *Liens*—Liens, charges, security interests or encumbrances upon real property or personal property.

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

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

1.26. *Notice to Proceed*—A written notice given by CITY to CONTRACTOR (with a copy to DESIGN PROFESSIONAL) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. *Official Holidays*—The following days are CITY's designated official holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.

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

1.29. *PCBs*—Polychlorinated biphenyls.

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

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

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

1.33. *Regular Working Hours*—CITY's regular working hours are from 7:00 A.M. to sunset.

1.34. *Resident Project Representative*—The authorized representative of DESIGN PROFESSIONAL who may be assigned to the site or any part thereof.

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

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

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

1.38. *Subcontractor*—An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.39. *Substantial Completion*—The Work (or a specified part thereof) has progressed to the point where, in the opinion of DESIGN PROFESSIONAL as evidenced by DESIGN PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by DESIGN PROFESSIONAL's written recommendation of final payment in accordance with paragraph 14.9.1. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.40. *Supplementary Conditions*—The part of the Contract Documents that amends or supplements these General Conditions.

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

1.42. *Underground Facilities*—All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other

communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.43. *Unit Price Work*—Work to be paid for on the basis of unit prices.

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

1.45. *Work Change Directive*—A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by CITY and recommended by DESIGN PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2. or 4.3. or to emergencies under paragraph 6.15. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.5.

1.46. *Written Amendment*—A written amendment of the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2
PRELIMINARY MATTERS

2.1. *Delivery of Bonds*: When CONTRACTOR delivers the executed Agreements to CITY, CONTRACTOR shall also deliver to CITY such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.1.

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

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

2.4. *Starting the Work*: CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

2.5. *Before Starting Construction or Work*:

2.5.1. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to DESIGN PROFESSIONAL any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from DESIGN PROFESSIONAL before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.5.2. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), CONTRACTOR shall submit to DESIGN PROFESSIONAL for review:

2.5.2.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.5.2.2. a preliminary schedule of Shop Drawing and Sample submittals that will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.5.2.3. a preliminary schedule of values for all of the Work that will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work;

2.5.2.4 a cash flow distribution schedule to be approved by CITY and DESIGN PROFESSIONAL.

2.5.3. Before any Work at the site is started, CONTRACTOR shall deliver to CITY, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance that CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.3.

2.6. *Preconstruction Conference*: Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR,

DESIGN PROFESSIONAL and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.5.2., procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

2.7. *Initially Acceptable Schedules*: Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, DESIGN PROFESSIONAL and others as appropriate will be held to review for acceptability to DESIGN PROFESSIONAL as provided below the schedules submitted in accordance with paragraph 2.5.2. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to DESIGN PROFESSIONAL as provided below. The progress schedule will be acceptable to DESIGN PROFESSIONAL as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on DESIGN PROFESSIONAL responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable to DESIGN PROFESSIONAL as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to DESIGN PROFESSIONAL as to form and substance.

ARTICLE 3
CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1. *Intent*:

3.1.1. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Colorado.

3.1.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by DESIGN PROFESSIONAL as provided in paragraph 9.4.

3.2. *Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies*:

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

3.2.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.2.3., CONTRACTOR shall report it to DESIGN PROFESSIONAL in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.15.) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.4. or 3.5.; provided, however, that CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.2.3. The provisions of the Construction Contract shall supersede any conflicting provisions of any other Contract Document. The provisions of the Specifications and Drawings, if any, shall supersede any conflicting provisions of any other Contract Document except the Construction Contract. The provisions of the Supplementary Conditions shall supersede any conflicting provisions of any other Contract Document, except the provisions of the Construction Contract or the Specifications and Drawings.

3.2.4. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.4. or 3.5. the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

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

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

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or DESIGN PROFESSIONAL, or any of their subcontractors, consultants, agents, or employees from

those set forth in the Contract Documents, nor shall it be effective to assign to CITY, DESIGN PROFESSIONAL or any of DESIGN PROFESSIONAL's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.10 or any other provision of the Contract Documents.

3.3. *Review or Judgment of DESIGN PROFESSIONAL:* Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of DESIGN PROFESSIONAL as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to DESIGN PROFESSIONAL any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

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

3.4.1. a formal Written Amendment,

3.4.2. a Change Order (pursuant to paragraph 10.5), or

3.4.3. a Work Change Directive (pursuant to paragraph 10.2).

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

3.5.1. a Field Order (pursuant to paragraph 9.5),

3.5.2. DESIGN PROFESSIONAL's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.17.4. and 6.17.5.), or

3.5.3. DESIGN PROFESSIONAL's written interpretation or clarification (pursuant to paragraph 9.4).

3.6. *Reuse of Documents*: CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with CITY (i) shall not have or acquire any title to or Ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing

the seal of DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of CITY and DESIGN PROFESSIONAL and specific written verification or adaption by DESIGN PROFESSIONAL.

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

4.1. *Availability of Lands*: CITY shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands that are designated for the use of CONTRACTOR. CITY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If CONTRACTOR and CITY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in CITY's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2. *Subsurface and Physical Conditions*:

4.2.1. *Reports and Drawings*: Reference is made to the Supplementary Conditions for identification of:

4.2.1.1. *Subsurface Conditions*: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents; and

4.2.1.2. *Physical Conditions*: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

4.2.2. *Limited Reliance by CONTRACTOR Authorized; Technical Data*: CONTRACTOR may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” CONTRACTOR may not rely upon or make any claim against CITY, DESIGN PROFESSIONAL or any of DESIGN PROFESSIONAL's Consultants with respect to:

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

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

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

4.2.3. *Notice of Differing Subsurface or Physical Conditions*: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any “technical data” on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1. and 4.2.2. is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or

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

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.15.), notify CITY and DESIGN PROFESSIONAL in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

4.2.5. *Possible Contract Documents Change*: If DESIGN PROFESSIONAL concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3, a Work Change Directive or

a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. *Possible Price and Times Adjustments*: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1. through 4.2.3.4., inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.8. and 11.9.; and

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

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

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

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If CITY and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, CITY, DESIGN PROFESSIONAL and DESIGN PROFESSIONAL'S Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3. *Physical Conditions—Underground Facilities*:

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

4.3.1.1. CITY and DESIGN PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.12. and repairing any damage thereto resulting from the Work.

4.3.2. *Not Shown or Indicated*: If an Underground Facility is uncovered or revealed at or contiguous to the site that was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.15.), identify the owner of such Underground Facility and give written notice to that owner and to CITY and DESIGN PROFESSIONAL. DESIGN PROFESSIONAL will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If DESIGN PROFESSIONAL concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.12. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If CITY and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, CITY, DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.4. *Reference Points*: CITY shall provide engineering surveys to establish reference points for construction which in DESIGN PROFESSIONAL's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out

the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of CITY. CONTRACTOR shall report to DESIGN PROFESSIONAL whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. *Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material*:

4.5.1. CITY shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and that may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CITY shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.15.), and (ii) notify CITY and DESIGN PROFESSIONAL (and thereafter confirm such notice in writing). CITY shall promptly consult with DESIGN PROFESSIONAL concerning the necessity for CITY to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after CITY has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If CITY and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then CITY may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If CITY and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. CITY may have such deleted portion of the Work performed by CITY's own forces or others in accordance with Article 7.

4.5.4. To the extent permitted by Colorado law, CITY shall indemnify and hold harmless CONTRACTOR, Subcontractors, DESIGN PROFESSIONAL, DESIGN PROFESSIONAL's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs,

losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) such claim, cost, loss or damage is caused in whole or in part, or is claimed to be caused in whole or in part by the negligence or willful misconduct of CITY, its officers or employees. Nothing contained in the Contract Documents shall constitute any waiver by CITY of any rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to CITY, its officers, or its employees.

4.5.5. The provisions of paragraphs 4.2. and 4.3. are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5
BONDS AND INSURANCE

5.1. *Performance, Payment and Other Bonds*:

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

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

5.2. *Licensed Sureties and Insurers; Certificates of Insurance*:

5.2.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required.

Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.2.2. CONTRACTOR shall deliver to CITY, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CITY or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.3.

5.3. *CONTRACTOR's Liability Insurance*:

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

5.3.1.1. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of Work under this Agreement, and Employer's Liability insurance with minimum limits of ONE MILLION DOLLARS ($1,000,000) each accident, ONE MILLION DOLLARS ($1,000,000) disease - policy limit, and ONE MILLION DOLLARS ($1,000,000) disease - each employee.

5.3.1.2. Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations related to the Work. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision and a waiver of subrogation.

5.3.1.3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of CONTRACTOR's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the CONTRACTOR has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the CONTRACTOR providing services to the OWNER under this Agreement.

5.3.2. The insurance policies required by this paragraph 5.3. shall include as additional insureds CITY, DESIGN PROFESSIONAL, DESIGN PROFESSIONAL's Consultants and the employees and agents of CITY, DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants and any other persons or entities identified in the Supplementary Conditions. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The CONTRACTOR shall be solely responsible for any deductible losses under any such policy.

5.3.3. Every policy required under this paragraph 5.3. shall be primary insurance, and any insurance carried by CITY, its officers, or its employees, or carried by or provided through any insurance pool of CITY, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above.

5.3.4. Failure on the part of the CONTRACTOR to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which CITY may immediately terminate this Agreement, or at its discretion, CITY may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by CITY shall be repaid by CONTRACTOR to CITY upon demand, or CITY may offset the cost of the premiums against any monies due to CONTRACTOR from CITY. The policies required herein shall not be cancelled, materially changed or renewal refused until at least thirty days' prior written notice has been given to CITY and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.2.2. shall so provide).

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

5.3.6. The parties hereto understand and agree that CITY is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to CITY, its officers or its employees.

5.4. *CITY's Liability Insurance*: In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.3., CITY, at CITY's option, may purchase and maintain at CITY's expense CITY's own liability insurance as will protect CITY against claims which may arise from operations under the Contract Documents.

5.5 *CITY Not Responsible for Other Insurance:* CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interest of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Contract Documents or policies of insurance. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.6. *Acceptance of Bonds and Insurance; Option to Replace*: If the CITY has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the CITY shall so notify the CONTRACTOR in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.5.3. CONTRACTOR shall provide to CITY such additional information with respect to insurance provided as CITY may reasonably request. If CONTRACTOR does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, CITY shall notify CONTRACTOR in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the CITY may elect to obtain equivalent Bonds or insurance to protect its interest at the expense of the CONTRACTOR, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6
CONTRACTOR'S RESPONSIBILITIES

6.1. *Supervision and Superintendence*:

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

6.1.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent who is capable of verbal communications with CITY representatives, who shall not be replaced without written notice to CITY and DESIGN PROFESSIONAL except under extraordinary circumstances. The superintendent will be

CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

6.2. *Labor, Materials and Equipment*:

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during Regular Working Hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any Official Holiday without CITY's written consent given after prior written notice to DESIGN PROFESSIONAL.

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

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY. If required by DESIGN PROFESSIONAL, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.3. *Progress Schedule*: CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.7. as it may be adjusted from time to time as provided below:

6.3.1. CONTRACTOR shall submit to DESIGN PROFESSIONAL for acceptance (to the extent indicated in paragraph 2.7.) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Specifications applicable thereto.

6.3.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.4. *Substitutes and "Or-Equal" Items*:

6.4.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other suppliers may be accepted by DESIGN PROFESSIONAL under the following circumstances:

6.4.1.1. "*Or Equal*": If in DESIGN PROFESSIONAL's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by DESIGN PROFESSIONAL as an "or-equal" item, in which case review and approval of the proposed item may, in DESIGN PROFESSIONAL's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.4.1.2. *Substitute Items*: If in DESIGN PROFESSIONAL's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.4.1.1., it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow DESIGN PROFESSIONAL to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by DESIGN PROFESSIONAL will include the following as supplemented in the Specifications and as DESIGN PROFESSIONAL may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by DESIGN PROFESSIONAL from anyone other than CONTRACTOR. If CONTRACTOR wished to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to DESIGN PROFESSIONAL for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an

itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by DESIGN PROFESSIONAL in evaluating the proposed substitute. DESIGN PROFESSIONAL may require CONTRACTOR to furnish additional data about the proposed substitute.

6.4.1.3. *CONTRACTOR's Expense*: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.4.2. *Substitute Construction Methods or Procedures*: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to DESIGN PROFESSIONAL. CONTRACTOR shall submit sufficient information to allow DESIGN PROFESSIONAL, in DESIGN PROFESSIONAL's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by DESIGN PROFESSIONAL will be similar to that provided in subparagraph 6.4.1.2.

6.4.3. *DESIGN PROFESSIONAL's Evaluation*: DESIGN PROFESSIONAL will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.4.1.2. and 6.4.2. DESIGN PROFESSIONAL will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without DESIGN PROFESSIONAL'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. CITY may require CONTRACTOR to furnish at Contractor's expense a special performance guarantee or other surety with respect to any "or-equal' or substitute. DESIGN PROFESSIONAL will record time required by DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.4.1.2. and 6.4.2. and in making changes in the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) occasioned thereby. Whether or not DESIGN PROFESSIONAL accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse CITY for charges of DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants for evaluating each such proposed substitute item.

6.5. *Concerning Subcontractors, Suppliers and Others*:

6.5.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to CITY and DESIGN PROFESSIONAL as indicated in paragraph 6.5.2.), whether initially or as a substitute, against whom CITY or DESIGN PROFESSIONAL may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other

person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.5.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to CITY in advance of the specified date prior to the Effective Date of the Agreement for acceptance by CITY and DESIGN PROFESSIONAL, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, CITY's or DESIGN PROFESSIONAL's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by CITY or DESIGN PROFESSIONAL of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of CITY or DESIGN PROFESSIONAL to reject Defective Work.

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

6.5.4. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with DESIGN PROFESSIONAL through CONTRACTOR.

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

6.5.6. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the

Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of CITY and DESIGN PROFESSIONAL.

6.6. *Patent Fees and Royalties*: CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device that is the subject of patent rights, trade secret rights, copyrights or other intellectual property rights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of CITY or DESIGN PROFESSIONAL its use is subject to patent rights, trade secret rights, copyrights or other intellectual property rights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, DESIGN PROFESSIONAL's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement or misappropriation of patent rights, trade secret rights, copyrights or other intellectual property rights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device.

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

6.8. *Laws and Regulations*:

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

6.8.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.2.2.

6.9. *Taxes*:

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

6.9.2. Where materials are incorporated into public improvements CONTRACTOR may be entitled to claim an exemption for state sales tax under C.R.S. § 39-26-114(1)(a) and municipal taxes under Lafayette Code § 110-122(7).

6.10. *Use of Premises*:

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, DESIGN PROFESSIONAL's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against CITY, DESIGN PROFESSIONAL or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.10.2. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by CITY at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.11. *Record Documents*: CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued

pursuant to paragraph 9.4.) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to DESIGN PROFESSIONAL for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to DESIGN PROFESSIONAL for CITY.

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

6.12.1. all persons on the Work site or who may be affected by the Work;

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

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

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.12.2. or 6.12.3. caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and DESIGN PROFESSIONAL has issued a notice to CITY and CONTRACTOR in accordance with paragraph 14.9.1. that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.13. *Safety Representative*: CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.14. *Hazard Communication Programs*: CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

6.15. *Emergencies*: In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY or DESIGN PROFESSIONAL, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give DESIGN PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If DESIGN PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.16. *Shop Drawings and Samples*:

6.16.1. CONTRACTOR shall submit Shop Drawings to DESIGN PROFESSIONAL for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.7.). All submittals will be identified as DESIGN PROFESSIONAL may require and in the number of copies specified in the Specifications. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show DESIGN PROFESSIONAL the materials and equipment CONTRACTOR proposes to provide and to enable DESIGN PROFESSIONAL to review the information for the limited purposes required by paragraph 6.17.4.

6.16.2. CONTRACTOR shall also submit Samples to DESIGN PROFESSIONAL for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as DESIGN PROFESSIONAL may require to enable DESIGN PROFESSIONAL to review the submittal for the limited purposes required by paragraph 6.17.4. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.17. *Submittal Procedures*:

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

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

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

6.17.1.3. all information relative to CONTRACTOR's sole responsibilities with respect to means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

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

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

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

6.17.4. DESIGN PROFESSIONAL will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by DESIGN PROFESSIONAL as required by paragraph 2.7. DESIGN PROFESSIONAL's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. DESIGN PROFESSIONAL's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by DESIGN PROFESSIONAL, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by DESIGN PROFESSIONAL on previous submittals.

6.17.5. DESIGN PROFESSIONAL's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called DESIGN PROFESSIONAL's attention to each such variation at the time of submission as

required by paragraph 6.17.3. and DESIGN PROFESSIONAL has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by DESIGN PROFESSIONAL relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.1.

6.17.6. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by DESIGN PROFESSIONAL as required by paragraph 2.7., any related Work performed prior to DESIGN PROFESSIONAL's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

6.18. *Continuing the Work*: CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.3. or as CITY and CONTRACTOR may otherwise agree in writing.

6.19. *CONTRACTOR's General Warranty and Guarantee*:

6.19.1. CONTRACTOR warrants and guarantees to CITY, DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants that all Work will be in accordance with the Contract Documents and will not be Defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.19.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.19.1.2. normal wear and tear under normal usage.

6.19.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.19.2.1. observations by DESIGN PROFESSIONAL;

6.19.2.2. recommendation of any progress or final payment by DESIGN PROFESSIONAL;

6.19.2.3. the issuance of a certificate of Substantial Completion or any payment by CITY to CONTRACTOR under the Contract Documents;

6.19.2.4. use or occupancy of the Work or any part thereof by CITY;

6.19.2.5. any acceptance by CITY or any failure to do so;

6.19.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by DESIGN PROFESSIONAL pursuant to paragraph 14.9.1.;

6.19.2.7. any inspection, test or approval by others; or

6.19.2.8. any correction of Defective Work by CITY.

6.19.3. CONTRACTOR shall, without regard to cause, repair or replace any non-conforming work (other than non-conforming work excluded under paragraph 6.19.1) during the one (1) year after final completion and acceptance of the Work in accordance with paragraph 14.9.1. After final completion and acceptance, CONTRACTOR shall maintain the Performance Bond required under paragraph 5.1 in an amount equal to ten percent (10%) of the Contract Price for a period of three (3) years.

6.20. *Indemnification*:

6.20.1 To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, DESIGN PROFESSIONAL's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of Design Professionals, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

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

6.20.3. The indemnification obligations of CONTRACTOR under paragraph 6.20 shall not extend to the liability of DESIGN PROFESSIONAL and DESIGN PROFESSIONAL'S Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

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

ARTICLE 7
OTHER WORK

7.1. *Related Work at Site*:

7.1.1. CITY may perform other work related to the Project at the site by CITY's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

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

7.1.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to DESIGN PROFESSIONAL in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work.

CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

7.2. *Coordination*: If CITY contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.2.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

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

7.2.3. the extent of such authority and responsibility will be provided.

Unless otherwise provided in the Supplementary Conditions, CITY shall have sole authority and responsibility with respect to such coordination.

ARTICLE 8
CITY'S RESPONSIBILITIES

8.1. *Communications:* Except as otherwise provided in these General Conditions, CITY shall issue all communications to CONTRACTOR through DESIGN PROFESSIONAL.

8.2. *Substitute Design Professional:* In case of termination of the employment of DESIGN PROFESSIONAL, CITY shall appoint a design professional against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former DESIGN PROFESSIONAL.

8.3. *Data and Payment:* CITY shall furnish the data required of CITY under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.9.1.

8.4. *Lands:* CITY's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1. and 4.4. Paragraph 4.2. refers to CITY's identifying and making available to CONTRACTOR copies of reports of exploration and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

8.5. *Change Orders:* CITY is obligated to execute Change Orders as indicated in paragraph 10.5.

8.6. *Inspections, Tests, Approvals:* CITY's responsibility with respect to certain inspections, tests and approvals is set forth in paragraph 13.3.2.

8.7. *Right to Stop, Suspend or Terminate Work:* In connection with CITY's right to stop Work or suspend Work, see paragraphs 13.5. and 15.1. Paragraph 15.2. deals with CITY's right to terminate services of CONTRACTOR under certain circumstances.

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

8.9. *Contaminants:* CITY'S responsibility with respect to undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

8.10. *Financial Arrangements:* If and to the extent CITY has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy CITY's obligations under the Contract Documents, CITY's responsibility with respect thereto will be as set forth in the Supplementary Conditions.

ARTICLE 9
DESIGN PROFESSIONAL'S STATUS DURING CONSTRUCTION

9.1. *CITY's Representative*: DESIGN PROFESSIONAL will be CITY's representative during the construction period. The duties and responsibilities and the limitations of authority of DESIGN PROFESSIONAL as CITY's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of CITY and DESIGN PROFESSIONAL.

9.2. *Visits to Site*: DESIGN PROFESSIONAL will make visits to the site at intervals appropriate to the various stages of construction as DESIGN PROFESSIONAL deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, DESIGN PROFESSIONAL will endeavor for the benefit of CITY to determine, in general, if the Work is proceeding in accordance with the Contract Documents. DESIGN PROFESSIONAL will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. DESIGN PROFESSIONAL's efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, DESIGN PROFESSIONAL will keep CITY informed of the progress of the Work and will endeavor to guard CITY against Defective Work. DESIGN PROFESSIONAL's visits and on-site observations are subject to all the limitations on DESIGN PROFESSIONAL's authority and responsibility set forth in paragraph 9.10., and particularly, but without limitation, during or as a result of DESIGN PROFESSIONAL's on-site visits or observations of CONTRACTOR's Work DESIGN

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

9.3. *Project Representative*: If CITY and DESIGN PROFESSIONAL agree, DESIGN PROFESSIONAL will furnish a Resident Project Representative to assist DESIGN PROFESSIONAL in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10. and in the Supplementary Conditions. If CITY designates another representative or agent to represent CITY at the site who is not DESIGN PROFESSIONAL's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be provided in the Supplementary Conditions.

9.4. *Clarifications and Interpretations*: DESIGN PROFESSIONAL will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as DESIGN PROFESSIONAL may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Any such written clarifications or interpretations are subject to approval by CITY. Such written clarifications and interpretations will be binding on CITY and CONTRACTOR. If CITY or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, CITY or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

9.5. *Authorized Variations in Work*: DESIGN PROFESSIONAL may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on CITY and also on CONTRACTOR who shall perform the Work involved promptly. If CITY or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, CITY or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

9.6. *Rejecting Defective Work*: DESIGN PROFESSIONAL will have authority to disapprove or reject Work that DESIGN PROFESSIONAL believes to be Defective, or that DESIGN PROFESSIONAL believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. DESIGN PROFESSIONAL will also have authority to require special inspection or testing of the Work as provided in paragraph 13.4.2., whether or not the Work is fabricated, installed or completed.

9.7. *Shop Drawings, Change Orders and Payments*:

9.7.1. In connection with DESIGN PROFESSIONAL's authority as to Shop Drawings and Samples, see paragraphs 6.16. through 6.17. inclusive.

9.7.2. In connection with DESIGN PROFESSIONAL's authority as to Change Orders, see Articles 10, 11, and 12.

9.7.3 In connection with DESIGN PROFESSIONAL's authority as to Applications for Payment, see Article 14.

9.8. *Determinations for Unit Prices*: DESIGN PROFESSIONAL will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. DESIGN PROFESSIONAL will review with CONTRACTOR the DESIGN PROFESSIONAL's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). DESIGN PROFESSIONAL's written decision thereon will be final and binding upon CITY and CONTRACTOR, unless, within ten days after the date of any such decision, either CITY or CONTRACTOR delivers to the other and to DESIGN PROFESSIONAL written notice of intention to appeal from DESIGN PROFESSIONAL's decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to DESIGN PROFESSIONAL's decision, unless otherwise agreed in writing by CITY and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.9.1.

9.9. *Decisions on Disputes*:

9.9.1. DESIGN PROFESSIONAL will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 with respect to changes in the Contract Price or Contract Times will be referred initially to DESIGN PROFESSIONAL in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to DESIGN PROFESSIONAL and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to DESIGN PROFESSIONAL and the other party within sixty days after the start of such occurrence or event unless DESIGN PROFESSIONAL allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to DESIGN PROFESSIONAL and the claimant within thirty days after receipt of the claimant's last submittal (unless DESIGN PROFESSIONAL allows additional time). DESIGN PROFESSIONAL will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. DESIGN PROFESSIONAL's written decision on such claim, dispute or other matter will be final and binding upon CITY and CONTRACTOR unless a written notice of intention to

appeal from DESIGN PROFESSIONAL'S written decision is delivered by CITY or CONTRACTOR to the other and to DESIGN PROFESSIONAL within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.2. When functioning as interpreter and judge under paragraphs 9.8. and 9.9., DESIGN PROFESSIONAL will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by DESIGN PROFESSIONAL pursuant to paragraphs 9.8. or 9.9. with respect to any such claim, dispute or other matter (except any that have been waived by the making or acceptance of final payment as provided in paragraph 14.10.) will be a condition precedent to any exercise by CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations with respect to any such claim or dispute.

9.10. *Limitations on DESIGN PROFESSIONAL's Authority and Responsibilities*:

9.10.1. Neither DESIGN PROFESSIONAL's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by DESIGN PROFESSIONAL in good faith either to exercise or not to exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by DESIGN PROFESSIONAL shall create, impose or give rise to any duty owed by DESIGN PROFESSIONAL to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

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

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

9.10.4. DESIGN PROFESSIONAL's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.8. will only be to determine generally that their content complies with the requirements of, and in the case of

certificates of inspections, tests and approvals, that the results certified indicate compliance with, the Contract Documents.

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

ARTICLE 10
CHANGES IN THE WORK

10.1. *Authority to Approve Changes:* Any other provision of the Contract Documents notwithstanding, for purposes of this Article 10, and only for purposes of this Article 10, the term "CITY" shall have the following meaning with respect to the approval and execution of Written Amendments, Change Orders and Work Change Directives.

10.1.1. With respect to any Written Amendment, Change Order or Work Change Directive that results in an increase in the Contract Price of an amount equal to five percent (5%) or less of the Contract Price, the department director who has responsibility for the Project may act as "CITY" with respect to the approval and execution of such Written Amendment, Change Order or Work Change Directive up to and until such time as the total dollar amount of all Written Amendments, Change Orders and Work Change Directives exceeds Ten Thousand Dollars ($10,000.00), at which time such Written Amendment, Change Order or Work Change Directive shall be subject to approval and execution pursuant to the provisions of the following subparagraph 10.1.2.

10.1.2. With respect to any Written Amendment, Change Order or Work Change Directive that results in an increase in the Contract Price of an amount greater than five percent (5%) but less than ten percent (10%) of the Contract Price, the Lafayette City Administrator may act as "CITY" with respect to the approval and execution of such Written Amendment, Change Order or Work Change Directive up to and until such time as the total dollar amount of all Written Amendments, Change Orders or Work Change Directives exceeds Fifty Thousand Dollars ($50,000.00), at which time such Written Amendment, Change Order or Work Change Directive shall be subject to approval and execution pursuant to the provisions of the following subparagraph 10.1.3.

10.1.3. With respect to any Written Amendment, Change Order or Work Change Directive that results in an increase in the Contract Price of an amount equal to or greater than ten percent (10%) of the Contract Price and further, with respect to any Written Amendment, Change Order or Work Change Directive that results in <u>any</u> increase in the Contract Price when the total amount of <u>all</u> Written Amendments, Change Orders or Work Change Directives exceeds Fifty Thousand Dollars ($50,000.00) the Lafayette City Council shall act as "CITY" with respect to the approval and execution of such Written Amendment, Change Order or Work Change Directive.

10.1.4. Nothing within this paragraph 10.1. or any subparagraph thereof shall prevent the Lafayette City Council from acting as the "CITY" with respect to the

approval and execution of any Written Amendment, Change Order or Work Change Directive of any amount whatsoever; it is the intent of this paragraph 10.1. and the subparagraphs hereof only to authorize the department director who has responsibility for the Project and the Lafayette City Administrator, in the absence of Lafayette City Council approval and execution, to approve and execute certain Written Amendments, Change Orders or Work Change Directives under the circumstances detailed above.

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

10.3. *Claims:* If CITY and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.4. *Limitations on Increases in Price or Time:* CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4. and 3.5. except in the case of an emergency as provided in paragraph 6.15. or in the case of uncovering Work as provided in paragraph 13.4.2.

10.5. *Change Orders:* CITY and CONTRACTOR shall execute appropriate Change Orders recommended by DESIGN PROFESSIONAL (or Written Amendments) covering:

10.5.1. changes in the Work that are (i) ordered by CITY pursuant to paragraph 10.2, (ii) required because of acceptance of Defective Work under paragraph 13.8. or correcting Defective Work under paragraph 13.9., or (iii) agreed to by the parties;

10.5.2. changes in the Contract Price or Contract Times that are agreed to by the parties; and

10.5.3. changes in the Contract Price or Contract Times that embody the substance of any written decision rendered by DESIGN PROFESSIONAL pursuant to paragraph 9.9.;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.

10.6. *Notice to Surety:* If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or

Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.7. *Limitations on Change Orders:* Notwithstanding the foregoing, no change in the Contract Price requiring additional compensable Work to be performed, which Work causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original Contract Documents, shall be valid, unless CITY gives CONTRACTOR written assurance that lawful appropriations to cover the costs of the additional Work have been made or unless such Work is covered under a remedy-granting provision in the Contract Documents.

ARTICLE 11
CHANGE IN THE CONTRACT PRICE

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

11.2. *Claim for Change to Contract Price:* The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to DESIGN PROFESSIONAL within the time permitted in paragraph 9.9.1. Notice of the amount of the claim shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by DESIGN PROFESSIONAL in accordance with paragraph 9.9. if CITY and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2. and paragraph 9.9.1.

11.3. *Determination of Value of Work:* The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

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

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (that may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.); or

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2., on the basis of the Cost of the Work (determined as provided in paragraphs 11.4. and 11.5.) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6.).

11.4. *Cost of the Work:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5.:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by CITY and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after Regular Working Hours, on Saturday, Sunday or Official Holidays, shall be included in the above to the extent authorized by CITY.

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

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CITY and CONTRACTOR and shall deliver such bids to CITY who will then determine, with the advice of DESIGN PROFESSIONAL, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4., 11.5., 11.6. and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

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

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

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of DESIGN PROFESSIONAL, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

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

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

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

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

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

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

11.5. *Cost of the Work Not to Include:* The term Cost of the Work shall not include any of the following:

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

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

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

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9. above).

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

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

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

11.6.1. a mutually acceptable fixed fee; or

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

11.6.2.1. for costs incurred under paragraphs 11.4.1. and 11.4.2., the CONTRACTOR's fee shall be fifteen percent (15%);

11.6.2.2. for costs incurred under paragraph 11.4.3., the CONTRACTOR's fee shall be five percent (5%);

11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1., 11.4.2., 11.4.3. and 11.6.2. is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent (15%) of the costs incurred by such Subcontractor under paragraphs 11.4.1. and 11.4.2. and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

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

11.6.2.5. the amount of credit to be allowed by CONTRACTOR to CITY for any change that results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent (5%) of such net decrease; and

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

11.7. *Cost Records:* Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4. and 11.5., CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to DESIGN PROFESSIONAL an itemized cost breakdown together with supporting data.

11.8. *Cash Allowances*: It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to CITY and DESIGN PROFESSIONAL. CONTRACTOR agrees that:

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

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

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

11.9. *Unit Price Work*:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by DESIGN PROFESSIONAL in accordance with paragraph 9.8.

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

11.9.3. CITY or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

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

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

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

ARTICLE 12
CHANGE OF CONTRACT TIMES

12.1. *Claim for Change to Contract Times:* The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to DESIGN PROFESSIONAL within the time permitted by paragraph 9.9.1. Notice of the extent of the claim shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by DESIGN PROFESSIONAL in accordance with paragraph 9.9. if CITY and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1 and paragraph 9.9.1.

12.2. *Time of the Essence:* All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. *Delay:* Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by CITY, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. *Sole Remedy:* Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to either (i) delay beyond the control of CONTRACTOR, or (ii) delay due to action of CITY, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall CITY be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7, or (iii) delays due to actions of CITY.

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

13.1. *Notice of Defects*: Prompt notice of all Defective Work of which CITY or DESIGN PROFESSIONAL has actual knowledge will be given to CONTRACTOR. All Defective Work may be rejected, corrected or accepted as provided in this Article 13.

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

13.3. *Tests and Inspections*:

13.3.1. CONTRACTOR shall give DESIGN PROFESSIONAL timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

13.3.2.1. for inspections, tests or approvals covered by paragraph 13.3.3. below;

13.3.2.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.4.2. below shall be paid as provided in said paragraph 13.4.2.; and

13.3.2.3. as otherwise specifically provided in the Contract Documents.

13.3.3. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume all responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish DESIGN PROFESSIONAL the required certificates of inspection or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for CITY's and DESIGN PROFESSIONAL's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

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

13.3.5 Uncovering Work as provided in paragraph 13.3.4. shall be at CONTRACTOR's expense unless CONTRACTOR has given DESIGN PROFESSIONAL timely notice of CONTRACTOR's intention to cover the same and DESIGN PROFESSIONAL has not acted with reasonable promptness in response to such notice.

13.4. *Uncovering Work*:

13.4.1. If any Work is covered contrary to the written request of DESIGN PROFESSIONAL, it must, if requested by DESIGN PROFESSIONAL, be uncovered for DESIGN PROFESSIONAL's observation and replaced at CONTRACTOR's expense.

13.4.2. If DESIGN PROFESSIONAL considers it necessary or advisable that covered Work be observed by DESIGN PROFESSIONAL or inspected or tested by others, CONTRACTOR, at DESIGN PROFESSIONAL's request, shall uncover, expose

or otherwise make available for observation, inspection or testing as DESIGN PROFESSIONAL may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be Defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

13.5. *CITY May Stop the Work*: If the Work is Defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any surety or other party.

13.6. *Correction or Removal of Defective Work*: If required by DESIGN PROFESSIONAL, CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by DESIGN PROFESSIONAL, remove it from the site and replace it with Work that is not Defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7. *Correction Period*:

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

removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

13.7.3. Where Defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.7, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

13.8. *Acceptance of Defective Work*: If, instead of requiring correction or removal and replacement of Defective Work, CITY (and, prior to DESIGN PROFESSIONAL's recommendation of final payment, also DESIGN PROFESSIONAL) prefers to accept it, CITY may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY's evaluation of and determination to accept such Defective Work (such costs to be approved by DESIGN PROFESSIONAL as to reasonableness). If any such acceptance occurs prior to DESIGN PROFESSIONAL's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to CITY.

13.9. *CITY May Correct Defective Work*: If CONTRACTOR fails within a reasonable time after written notice from DESIGN PROFESSIONAL to correct Defective Work or to remove and replace rejected Work as required by DESIGN PROFESSIONAL in accordance with paragraph 13.6., or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. In connection with such corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's representatives, agents and employees, CITY's other contractors and DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants access to the site to enable CITY to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by CITY in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim

therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's Defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

ARTICLE 14
PAYMENTS TO CONTRACTOR AND COMPLETION

14.1. *Schedule of Values*: The schedule of values established as provided in paragraph 2.7. will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to DESIGN PROFESSIONAL. Progress payments on account of Unit Price Work will be based on the number of units completed.

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

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

14.4. *Review of Applications for Progress Payment*:

14.4.1. DESIGN PROFESSIONAL will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing DESIGN PROFESSIONAL's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to CITY with DESIGN PROFESSIONAL's recommendation, the amount recommended will (subject to the provisions of paragraph 14.4.4.) become due and when due will be paid by CITY to CONTRACTOR.

14.4.2. DESIGN PROFESSIONAL's recommendation of any payment requested in an Application for Payment will constitute a representation by DESIGN PROFESSIONAL to CITY, based on DESIGN PROFESSIONAL's on-site observations of the executed Work as an experienced and qualified design professional and on DESIGN PROFESSIONAL's review of the Application for Payment and the accompanying data and schedules, that to the best of DESIGN PROFESSIONAL's knowledge, information and belief:

14.4.2.1. the Work has progressed to the point indicated,

14.4.2.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.8., and to any other qualifications stated in the recommendation), and

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

However, by recommending any such payment DESIGN PROFESSIONAL will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to DESIGN PROFESSIONAL in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by CITY or entitle CITY to withhold payment to CONTRACTOR.

14.4.3. DESIGN PROFESSIONAL's recommendation of any payment, including final payment, shall not mean that DESIGN PROFESSIONAL is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.4.4. DESIGN PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in DESIGN PROFESSIONAL's opinion, it would be incorrect to make the representations to CITY referred to in paragraph 14.4.2. DESIGN PROFESSIONAL may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in DESIGN PROFESSIONAL's opinion to protect CITY from loss because:

14.4.4.1. the Work is Defective, or completed Work has been damaged requiring correction or replacement,

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

14.4.4.3. CITY has been required to correct Defective Work or complete Work in accordance with paragraph 13.9., or

14.4.4.4. DESIGN PROFESSIONAL has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1.1. through 15.2.1.4. inclusive.

14.4.5. CITY may refuse to make payment of the full amount recommended by DESIGN PROFESSIONAL because:

14.4.5.1. claims have been made against CITY on account of CONTRACTOR's performance or furnishing of the Work,

14.4.5.2. Claims for non-payment to a Subcontractor or Supplier or any of their subcontractors have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to CITY to secure the satisfaction and discharge of such claims,

14.4.5.3. there are other items entitling CITY to a set-off against the amount recommended, or

14.4.5.4. CITY has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.4.4.1 through 14.4.4.3 or paragraphs 15.2.1.1. through 15.2.1.4. inclusive;

but CITY must give CONTRACTOR immediate written notice (with a copy to DESIGN PROFESSIONAL) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by CITY and CONTRACTOR, when CONTRACTOR corrects to CITY's satisfaction the reasons for such action.

14.5. *Substantial Completion*:

14.5.1. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify CITY and DESIGN PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that DESIGN PROFESSIONAL issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and DESIGN PROFESSIONAL shall make an inspection of the Work to determine the status of completion. If DESIGN PROFESSIONAL does not consider

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

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

14.6. *Partial Utilization*: Use by CITY at CITY's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) CITY, DESIGN PROFESSIONAL and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.6.1. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work that CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to CITY and DESIGN PROFESSIONAL that such part of the Work is substantially complete and request DESIGN PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and DESIGN

PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request DESIGN PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, CONTRACTOR and DESIGN PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion. If DESIGN PROFESSIONAL does not consider that part of the Work to be substantially complete, DESIGN PROFESSIONAL will notify CITY and CONTRACTOR in writing giving the reasons therefor. If DESIGN PROFESSIONAL considers that part of the Work to be substantially complete, the provisions of paragraph 14.5. will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility with respect thereto and access thereto.

14.7. *Final Inspection*: Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, DESIGN PROFESSIONAL will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.8. *Final Application for Payment*: After CONTRACTOR has completed all such corrections to the satisfaction of DESIGN PROFESSIONAL and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.3., certificates of inspection, marked-up record documents (as provided in paragraph 6.11.) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.3.5., and (ii) consent of the surety, if any, to final payment.

14.9. *Final Payment and Acceptance*:

14.9.1. If, on the basis of DESIGN PROFESSIONAL's observation of the Work during construction and final inspection, and DESIGN PROFESSIONAL's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, DESIGN PROFESSIONAL is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, DESIGN PROFESSIONAL will, within ten days after receipt of the final Application for Payment, indicate in writing DESIGN PROFESSIONAL's recommendation of payment and present the Application to CITY for payment. At the same time DESIGN PROFESSIONAL will also give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.10. Otherwise, DESIGN PROFESSIONAL will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

14.9.2. Upon receipt of the final Application for Payment, CITY will schedule a date for final settlement, which final settlement shall be duly advertised at least 10 days prior thereto by publication of notice thereof at least twice in a public newspaper of general circulation published in Boulder County.

14.9.3. If CITY receives, at any time up to and including the date of final settlement, a notarized statement by any person, partnership, or corporation, or other entity that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by CONTRACTOR or its Subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work, whose claim therefor has not been paid by CONTRACTOR or any Subcontractor, CITY shall withhold from all payments to CONTRACTOR sufficient funds to insure the payment of said claims until the same have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with CITY a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly authorized agent or assign. Such funds shall not be withheld longer than 90 days following the date of final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of such pending action is filed with CITY.

14.9.4. At the expiration of such 90-day period, the CITY shall pay to CONTRACTOR such monies and funds as are not the subject of suit and pending action notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments that may result from such suit. At any time within 90 days following the date of final settlement as published, any claimant whose claims have not been paid by CONTRACTOR or any Subcontractor may commence an action to recover the same, individually or collectively, against the surety on the Bonds provided pursuant to paragraph 5.1.

14.9.5. Whenever a notarized statement of a claim has been filed in accordance with paragraph 14.9.3., CONTRACTOR may substitute a bond, pursuant to C.R.S. § 38-26-108, at which time CITY shall release the monies being withheld pursuant to the notarized statement of claim on the same terms and conditions as if the notarized statement of claim had been released by the claimant.

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

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

14.10. *Waiver of Claims*: The making and acceptance of final payment will constitute:

14.10.1. a waiver of all claims by CITY against CONTRACTOR, except unsettled claims, from Defective Work appearing after final inspection pursuant to paragraph 14.7., from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

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

ARTICLE 15
SUSPENSION OF WORK AND TERMINATION

15.1. *CITY May Suspend Work*: At any time and without cause, CITY may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and DESIGN PROFESSIONAL which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

15.2. *CITY May Terminate*:

15.2.1. Upon the occurrence of any one or more of the following events:

15.2.1.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.7. as adjusted from time to time pursuant to paragraph 6.3.);

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

15.2.1.3. if CONTRACTOR disregards the authority of DESIGN PROFESSIONAL; or

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

CITY may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of

CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by CITY arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balances, CONTRACTOR shall pay the difference to CITY. Such claims, costs, losses and damages incurred by CITY will be reviewed by DESIGN PROFESSIONAL as to their reasonableness and when so approved by DESIGN PROFESSIONAL incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CITY shall not be required to obtain the lowest price for the Work performed.

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

15.2.3. Upon seven days' written notice to CONTRACTOR and DESIGN PROFESSIONAL, CITY may, without cause and without prejudice to any other right or remedy of CITY, elect to terminate the Agreement for the CITY's convenience. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.2.3.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.2.3.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.2.3.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.2.3.4. for reasonable expenses directly attributable to termination.

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

15.3. *CONTRACTOR May Stop Work or Terminate*: If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by CITY or under

an order of court or other public authority, or DESIGN PROFESSIONAL fails to act on any Application for Payment within thirty days after it is submitted or CITY fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to CITY and DESIGN PROFESSIONAL, and provided CITY or DESIGN PROFESSIONAL do not remedy such suspension or failure within that time, terminate the Agreement and recover from CITY payment on the same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if DESIGN PROFESSIONAL has failed to act on an Application for Payment within thirty days after it is submitted, or CITY has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven day's written notice to CITY and DESIGN PROFESSIONAL stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.3 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16
MISCELLANEOUS

16.1. *Computation of Times*: When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on an Official Holiday, such day will be omitted from the computation.

16.2. *Notice of Claim*: Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 16.2 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

16.3. *Cumulative Remedies*: The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.6., 6.10., 6.19., 6.20., 13.1., 13.7., 13.9., 14.3. and 15.2. and all of the rights and remedies available to CITY and DESIGN PROFESSIONAL thereunder, are in addition to, and are not to be construed in any way as a limitation on, any rights and remedies available to any or all of them that are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.4. *Professional Fees and Court Costs Included*: Whenever reference is made to “claims, costs, losses and damages,” it shall include in each case, but not be limited to, all fees

and charges of Design Professionals, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette Engineering
Contractor:
Total Cost:$
Acct. #34-301-9321

CONSTRUCTION CONTRACT
SUPPLEMENTARY CONDITIONS

CITY OF LAFAYETTE	CONTRACTOR
_____	_____
Mayor	[Name, Title]
Attest:	Attest:
_____	_____
City Clerk	[Title]

SUPPLEMENTARY CONDITIONS

ARTICLE 1
DEFINITIONS

No Changes

ARTICLE 2
PRELIMINARY MATTERS

SC-2.2. *Copies of Documents*: CITY shall furnish to CONTRACTOR electronic copies of all Contract Documents.

Add
SC-2.5.4 *Utility Locates:* It shall be the CONTRACTOR'S responsibility to determine the exact location of all utilities and utility service laterals for the Project. The City of Lafayette shall not be considered the OWNER of any underground utility except for sanitary sewer, storm sewer and water. The City of Lafayette will not be held liable in any claims or delays caused by underground utility locations which they do not own; including extensions of contract times and damages.

SC-2.7. *Initially Acceptable Schedules*: The CONTRACTOR shall be held to the following schedule restrictions:

All concrete work in an area must be completed before paving work may commence in that same area. Concrete may not be installed adjacent to new asphalt.

ARTICLE 3
CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

No Changes

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

SC-4.2.1.1 *Reports and Drawings*: The following reports of explorations and tests of subsurface conditions at or contiguous to the site have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents:

None.

SC-4.2.2. *Technical Data*: The following drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents:

None.

ARTICLE 5
BONDS AND INSURANCE

SC-5.1. *Performance, Payment and Other Bonds*: The following Bonds shall also be required:

No additional bonds

SC-5.2. *Licensed Sureties and Insurers; Certificates of Insurance*: Each surety and insurance company shall also meet the following additional requirements and qualifications:

Contractor shall provide and any and all insurance coverages and amounts required by the Colorado Department of Transportation to obtain Utility and Special Use Permits. All cost associated with meeting these coverages and amounts shall not be paid for separately but included in the bid prices.

SC-5.3.2 *Additional Insureds*: All insurance policies required by paragraph GC5.3. shall include the following as additional insureds:

City of Lafayette and its Employee's and Agents
WesTest, LLC

ARTICLE 6
CONTRACTOR'S RESPONSIBILITIES

SC-6.5. *Concerning Subcontractors, Suppliers and Others*: Prior to issuance of the Notice to Proceed, CONTRACTOR shall identify to CITY the following Subcontractors, Suppliers, or other persons or organizations:

All

SC-6.7. *Permits/Licenses*:

A City of Lafayette Contractor's Licenses will be required for the CONTRACTOR and all subcontractors and may be obtained at no cost from the City of Lafayette Department of Planning and Building.

ARTICLE 7
OTHER WORK

SC-7.2. *Coordination*:

SC-7.2.1 the following person, firm or corporation will have authority and responsibility for coordination of the activities among the various prime contractors:

WesTest, LLC

SC-7.2.2 the specific matters to be covered by such authority and responsibility are as follows:

Material testing

SC-7.2.3 the extent of such authority and responsibility is as follows:

Rejection of sub-standard work, determine limits of work.

ARTICLE 8
CITY'S RESPONSIBILITIES

No Changes

ARTICLE 9
DESIGN PROFESSIONAL'S STATUS DURING CONSTRUCTION

SC-9.3. *Project Representative:* The Resident Project Representative shall have the following responsibilities, authority and limitations:

Project Manager – Shall act as CITY's representative, assume all duties and responsibilities and have the rights and authority assigned to DESIGN PROFESSIONAL in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 10
CHANGES IN THE WORK

No Changes

ARTICLE 11
CHANGE OF CONTRACT PRICE

No Changes

ARTICLE 12
CHANGE OF CONTRACT TIMES

No Changes

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

No Changes

ARTICLE 14
PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.2 *Application for Progress Payment:* CONTRACTOR may withdraw the whole or any portion of the retainage provided for in the Contract Documents if CONTRACTOR deposits acceptable securities, as that term is defined by C.R.S. § 24-91-102(1), with CITY. The deposit of such acceptable securities, including any escrow agreement or custodian therefore and the earning of any interest thereon, shall be governed by C.R.S. §§ 24-91-105 through 108 inclusive. This provision shall not apply if a portion of the Contract Price is to be paid with federal funds.

ARTICLE 15
SUSPENSION OF WORK AND TERMINATION

No Changes

ARTICLE 16
MISCELLANEOUS

No Changes

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost: $
Acct. or P.O. # 34-301-9321

SPECIAL PROVISIONS

1. DESCRIPTION OF WORK

The CONTRACTOR shall furnish all the labor, materials, equipment, tools, services, traffic control, resident notifications, mobilization, and preparations necessary to perform and complete in a workmanlike manner all work required for the construction of the Project as documented in the Contract Documents, Construction Contract Article 1.

All areas as described in the **2013 City Wide Street Rehabilitation Maps 1 to 43** to be marked by DESIGN PROFESSIONAL for patching and overlay work. Extent of Aggregate Base Course and 'Extra' work to be determined by DESIGN PROFESSIONAL after contract award and during progress of patching and overlay work.

1.1. Mobilization

This work consists of the mobilization of personnel, equipment and supplies at the project site in preparation for work on the project. This item shall also include other necessary facilities and all other costs incurred or labor and operations which must be performed prior to beginning the other items under the Contract.

1.1.1. Measurement and Payment

This item shall be measured as one lump sum price and will be paid for as such.

1.2. Pavement Removal- Full Width Mill

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for the removal and disposal of existing asphalt by milling within the limits of the removal area as identified in the **2013 City Wide Street Rehabilitation Maps 5, 9, 14, 16, 17, 18, 19, 23, 25, 26, 27, 28, 29, 30, 31, 33, 34, 36, 37, 38, and 41.** Asphalt pavement shall be milled the full width of the roadway between the concrete gutter edges on either side to a depth of two and a half inches (2.5"). All perimeters of removal areas described under the Location of Work shall have a clean, straight edge after removal. Removal shall include all materials encountered, except for existing utility appurtenances, regardless of their nature or of the manner in

which they are removed. Unsuitable material below cut which is determined unfit for pavement base shall be replaced with Class 6 Base Course and shall be paid for under the Sub-Grade Reconstruction bid item. Care shall be taken such that no material is loosened or damaged below or outside the removal area. Removal around or near manholes or valve boxes must be completed to the satisfaction of the DESIGN PROFESSIONAL. All milled material remaining on the roadway shall be swept immediately after milling. Disposal of removed asphalt and other materials encountered in asphalt removal, other than those quantities listed in Section 1.2.1. of these Special Provisions, will be the responsibility of the CONTRACTOR.

Any removed surfaces leaving a grade differential of 1 in. or more running perpendicular to the normal direction of vehicular travel must be repaved the same day or must have a temporary asphalt ramp of a 25:1 slope placed to bridge the grade difference until such time that the overlay is completed. The cost of this ramp and removal before paving shall be included in the Contract Unit Price and not measured or paid for separately.

The CITY has no knowledge of manholes, valve boxes or other structures lying below the surface of the asphalt. The CONTRACTOR shall bear all risk associated with such structures should they exist.

1.2.1. Asphalt Millings to be Delivered to CITY

A portion of asphalt millings removed under the work item Pavement Removal—Milling shall be delivered to the CITY. Delivery of milled asphalt to the CITY shall be in accordance with Section 202.03 of the **Standard Specifications**. The locations to which this material shall be delivered and the quantities that shall be delivered to each location are specified below.

Location	Address	Quantity of Milled Asphalt (truck loads)
City of Lafayette Water Treatment Facility	3566 W Baseline Rd Lafayette, CO 80026	5

Disposal of all asphalt removed beyond the quantities listed here in Section 1.1.2 shall be the responsibility of the CONTRACTOR.

1.2.2. Measurement and Payment

Full Width Milling will be measured by the area in square yards, completed in accordance with the specifications and drawings to the required depth, and accepted. Hauling, delivery of removed asphalt to CITY facilities described in Section 1.1.1 and disposal of removed asphalt and other materials encountered in asphalt removal shall not be measured or paid for separately but shall be included in the Contract Unit Price for Pavement Removal- Full Width Mill.

1.3. Pavement Removal- Patch Mill

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for patch milling and disposal of existing asphalt within the limits for patch milling as identified in the **2013 City Wide Street Rehabilitation Maps 15, 18, 23, 32, and 33**. Milling shall be completed within the perimeters marked by DESIGN PROFESSIONAL to a depth of two and a half inches (2.5”). The areas marked by DESIGN PROFESSIONAL for patch milling will measure no less than four feet (4’) in width and will vary in length. Removal shall include all materials encountered, except for existing utility appurtenances, regardless of their nature or of the manner in which they are removed. Unsuitable material below cut which is determined unfit for pavement base shall be replaced with Class 6 Base Course and shall be paid for under the Sub-Grade Reconstruction bid item. Care shall be taken such that no material is loosened or damaged below or outside the removal area. Removal around or near manholes or valve boxes must be completed to the satisfaction of the DESIGN PROFESSIONAL. All milled material remaining on the roadway shall be swept immediately after milling. Disposal of removed asphalt and other materials encountered in patch milling will be the responsibility of the CONTRACTOR.

Any removed surfaces leaving a grade differential of 1 in. or more running perpendicular to the normal direction of vehicular travel must be repaved the same day or must have a temporary asphalt ramp of a 25:1 slope placed to bridge the grade difference until such time that the overlay is completed. The cost of this ramp and removal before paving shall be included in the Contract Unit Price and not measured or paid for separately.

The CITY has no knowledge of manholes, valve boxes or other structures lying below the surface of the asphalt. The CONTRACTOR shall bear all risk associated with such structures should they exist.

1.3.1. Measurement and Payment

Patch milling will be measured by the area in square yards, completed in accordance with the specifications and drawings to the required depth, and accepted. Hauling and disposal of removed asphalt and other materials encountered in patch milling shall not be measured or paid for separately but shall be included in the Contract Unit Price for Pavement Removal- Patch Mill.

1.4. Asphalt Pavement Overlay (2.5 in. Thickness)

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for overlaying of asphalt pavement as indicated in the **2013 City Wide Street Rehabilitation Maps 5, 9, 14, 15, 16, 17, 18, 19, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 41**. Asphalt pavement overlay is to take place in the areas that were milled per Sections 1.2 and 1.3 of these **Special Provisions**. The new asphalt pavement shall match the grade of existing adjacent asphalt or concrete pavement and shall have a minimum thickness of two and a

half inches (2.5”). Tack coat shall be placed on all surfaces to adjoin the new asphalt pavement prior to placement. Any remaining weeds shall be treated and removed prior to paving and all areas of overlay shall be swept immediately prior to paving. It is the CONTRACTOR’s responsibility to raise or lower any existing manhole or valve box covers to one-quarter inch (1/4”) below the new grade including any necessary expansion rings. The CONTRACTOR shall also coordinate with the City’s contractor for the replacement of existing traffic loops at signalized intersections when applicable.

1.4.1. Measurement and Payment

Asphalt overlay will be measured and paid for by the ton completed in accordance with the specifications and drawings to the required depth and accepted and in accordance with subsections 401.21, 401.22 and 403.05 of the **Colorado Department of Transportation Standard Specifications for Road and Bridge Construction**, latest revision. Preparation, tack coat, asphalt cement, asphalt recycling agent, additives, hydrated lime, and all other work necessary to complete Asphalt Pavement Overlay will not be paid for separately but shall be included in the Contract Unit Price for Asphalt Pavement Overlay.

1.5. Remove & Replace Asphalt Pavement

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for removal and replacement of existing asphalt within the limits of the patch area marked by DESIGN PROFESSIONAL. All perimeters of patch areas described under the **2013 City Wide Street Rehabilitation Maps 8, 9, 12, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 41, and 42** shall be saw-cut or milled to the full depth of the asphalt. After removal of asphalt pavement, the sub-grade beneath the removed area shall be moisture conditioned to within 2% of optimum moisture and compacted to a minimum of 95% of Standard Proctor density, ASTM D 698. If DESIGN PROFESSIONAL determines the sub-grade is unstable, over-excavation, replacement with a Class 6 Base Course, and compaction/stabilization will be required and shall be paid for under the Aggregate Base Course bid item, Section 1.6 of these Special Provisions. Tack coat shall be placed on all surfaces to adjoin the new asphalt pavement prior to placement. The new asphalt pavement shall match the grade of existing adjacent asphalt or concrete pavement and shall have a minimum thickness of six inches (6”). The depth of the patch areas may be reduced by the depth of the adjacent milling in areas where milling will take place. It is the CONTRACTOR’S responsibility to raise any existing manhole or valve box covers to one-quarter inch (1/4”) below the new grade including any necessary expansion rings. The CONTRACTOR shall also coordinate with the City’s contractor for the replacement of existing traffic loops at signalized intersections when applicable.

1.5.1. Measurement and Payment

Remove & Replace Asphalt Pavement will be measured and paid for by the ton completed in accordance with the specifications and drawings to the required depth and accepted and in accordance with subsections 401.21, 401.22 and 403.05 of the **Colorado Department of Transportation Standard Specifications for Road and Bridge Construction**, latest revision. Saw cutting, removal and disposal of material, preparation, tack coat, asphalt cement, asphalt recycling agent, additives, hydrated lime, and all other work necessary to complete removal and replacement of asphalt will not be paid for separately but shall be included in the Contract Unit Price for Remove & Replace Asphalt Pavement.

1.6. Sub-Grade Reconstruction

This work shall include but is not limited to furnishing all necessary materials, labor and equipment necessary for installing Class 6 Aggregate Base Course at locations determined as needed by the DESIGN PROFESSIONAL. This material shall be placed and compacted to 95% of the Standard Proctor Density with moisture content of +/- 2% of Optimum Moisture Content ASTM698 or AASHTO T-99. If the required depth of the aggregate base course exceeds 6 inches, it shall be constructed in two or more layers. The maximum compacted thickness of any one layer shall not exceed 6 inches. When vibratory or other approved type of special compacting equipment are used, the compacted depth of a single layer may be increased to 8 inches upon request, provided that specified density is achieved and written approval is given.

1.6.1. Measurement and Payment

Aggregate Base Course will be measured and paid for by the cubic yard, installed to the required depth and accepted.

1.7. Petrotac® Pavement Repair Membrane

This work shall include but is not limited to furnishing all necessary materials, labor and equipment necessary for installing Petrotac® Pavement Repair Membrane at locations determined by DESIGN PROFESSIONAL. Petrotac® Membrane measuring twelve inches (12”) in width is to be placed in accordance with the product installation guidelines over cracks wider than one inch (1”) after the street has been milled and prior to being overlaid. Prior to the placement of the membrane, the milled surface shall be freed of particulates, dust and moisture using compressed air. Depending on the roughness of the milled surface, an approved primer or leveling course may be required.

1.7.1. Measurement and Payment

Petrotac® Pavement Repair Membrane will be measured and paid for by the linear foot of crack being covered, installed to the required specifications and accepted. Any

membrane that is installed incorrectly or is damaged during installation shall be removed and replaced at the expense of the CONTRACTOR. All other work and materials necessary to complete the membrane installation will not be paid for separately but shall be included in the Contract Unit Price for Petrotac® Pavement Repair Membrane.

1.8. Lane Striping

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for application or replacement of lane striping in patch, overlay and reconstruction areas to match existing striping prior to construction. This may include a combination of colors and/or widths of lane striping application. It is the CONTRACTOR's responsibility to inspect and record the location, dimensions and details of existing striping prior to milling, patching, overlay or reconstruction. All lane striping shall comply with the **Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)**, Latest Revision. Lane striping shall be done using an approved epoxy paint applied according to the product specifications. Temporary striping shall be placed immediately after asphalt placement with permanent striping placed no longer than 36 hours after.

1.8.1. Measurement and Payment

Lane striping, regardless of color, shall be paid for by the linear foot of stripe installed in accordance with the specifications and drawings and accepted. Temporary striping will not be measured or paid for separately but shall be included in the Contract Unit Price for Lane Striping.

1.9. Pavement Markings

This work shall include but is not limited to all materials, labor, equipment, services, traffic control, resident notifications, mobilization, and preparations necessary for the replacement of various pavement symbols and words using stamped thermoplastic markings at specified intersections on Indian Peaks Drive, Ceres Drive, Centaur Village Court, and Rendezvous Drive as identified in the **2013 City Wide Street Rehabilitation Maps 16, 23, 27, 33, and 36**. The lines, words and arrows shall be PreMark® Preformed Thermoplastic or approved equal installed according to the product specifications. The preformed thermoplastic shall not require that the existing pavement is preheated to a specified temperature and shall utilize heating indicators for proper placement. The thermoplastic shall conform to AASHTO designation M249-79 (90), with the exception of the relevant differences due to the material being supplied in a preformed state. It is the CONTRACTOR's responsibility to inspect and record the location, dimensions and details of existing markings prior to milling, patching, overlay or reconstruction. All pavement markings shall comply with the **Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)**, Latest Revision.

1.9.1. Measurement and Payment

Stamped thermoplastic pavement markings will be measured and paid for by the square foot installed in accordance with the specifications and drawings. Temporary pavement markings will not be measured or paid for separately but shall be included in the Contract Unit Price for Pavement Markings.

1.10. Traffic Control

This work shall include but is not limited to all materials, equipment, preparations, labor and services required to provide traffic control on the collector streets being repaired, specifically on South Boulder Road, South Public Road, 120th Street, 111th Street, and Crossing Drive. Traffic control on all other streets remains incidental to the cost of the applicable repairs on those streets. All traffic control preparations and work shall adhere to Section 5 of these Special Provisions.

1.10.1. Measurement and Payment

Traffic Control shall be paid for by the day that it is provided on the roadways outlined in Section 1.10. Payment will only be provided for days on which a minimum of two (2) hours of pavement removal and/or placement is taking place. All other work and materials necessary to provide traffic control will not be paid for separately but shall be included in the Contract Unit Price for Traffic Control.

2. CONTRACTOR SUBMITTALS

The CONTRACTOR shall provide the following submittals:

1. Hot Asphalt Pavement Mix Designs
2. Concrete Mix Design
3. Pavement Marking Material Specifications
4. Construction Staging and Traffic Rating Plan
5. Traffic Control Plan
6. Construction Schedule

The CONTRACTOR shall stamp, date and sign all submittals as “Reviewed” by the CONTRACTOR prior to submitting them to the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall have a minimum of seven (7) calendar days to review submittals. Failure of the CONTRACTOR to deliver submittals in sufficient time for the DESIGN PROFESSIONAL’s seven (7) calendar day review shall not constitute a delay to Project contract time.

3. MATERIALS

All materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown in the Contract.

For those items of work where working tolerances are not specified, the CONTRACTOR shall perform the work in a manner consistent with reasonable and customary manufacturing and construction practices.

When the DESIGN PROFESSIONAL finds the materials furnished, or the finished product are unsuitable and not in conformity with the Contract, the materials or finished product shall be removed and replaced or otherwise corrected at the expense of the CONTRACTOR.

4. PRECONSTRUCTION MEETING

A preconstruction meeting will be scheduled after award of the contract. The City of Lafayette, City Engineer and DESIGN PROFESSIONAL, as well as the Awarded CONTRACTOR, any Subcontractors and the City's testing agency will be in attendance.

5. TRAFFIC CONTROL

The CONTRACTOR shall coordinate the staging of work described in the Contract Documents with the DESIGN PROFESSIONAL. During construction, one travel lane in each direction shall be open to traffic at all times, unless otherwise directed by the DESIGN PROFESSIONAL.

Traffic control shall be in accordance with Subsection 103.1.8 TRAFFIC CONTROL, BARRICADES AND WARNINGS of City of Lafayette Standards and Specifications and Section 630 CONSTRUCTION ZONE TRAFFIC CONTROL as detailed in the Colorado Department of Transportation, "Standard Specifications for Road and Bridge Construction", latest edition.

A traffic control plan shall be submitted to the DESIGN PROFESSIONAL for approval seven (7) calendar days before the contract work is scheduled to begin. The CONTRACTOR is responsible for providing and coordinating all traffic control throughout the Project.

"No Parking" signs shall be placed in work areas a minimum of 48 hours prior to commencement of work. Failure to place signs according to this time restriction may cause the DESIGN PROFESSIONAL to stop all work in that area. Any delay in project completion due to this failure will be the CONTRACTOR's responsibility and will not constitute additional contract time.

All traffic control devices shall be removed from the project area immediately upon completion of work in that specific area.

The CONTRACTOR shall not do any work within the travel lanes on State highways outside the times approved by the Colorado Department of Transportation. City of Lafayette work shall not start prior to 7:00 a.m. unless allowed otherwise by the ENGINEER. All lanes shall be available for traffic before this time, or as directed.

All costs to the foregoing requirements shall not be paid for separately, but shall be included in the contract prices of the Project.

Contact Brad Dallam / City of Lafayette Department of Public Works (303) 665-5588 for any proposed changes to the approved traffic control plan.

6. UTILITIES

It shall be the CONTRACTOR's responsibility to determine the exact location of all utilities and utility service laterals for the Project. The Utility Notification Center of Colorado (UNCC) must be contacted forty-eight (48) hours prior to beginning any excavation or grading in the area of utilities.

The City of Lafayette shall not be considered the OWNER of any underground utility except for sanitary sewer, storm sewer and water. The City of Lafayette will not be held liable in any claims or delays or damage caused by underground utility locations or absence of locates which they do not own; including extensions of contract time and damages.

7. RESIDENTIAL AND BUSINESS PROPERTY OWNER NOTIFICATION

It is the responsibility of the CONTRACTOR to give notice in writing to all Residential and Business Property Owners affected by the work of this contract. Written notice shall be given a minimum of 48 hours prior to the commencement of work in the affected area, City inspector shall verify the notification of all property owners.

Project: 2013 City Wide Street Rehabilitation
Design Professional: City of Lafayette
Contractor:
Total Cost:
Acct. or P.O. # 34-301-9321

STANDARD SPECIFICATIONS

1. Primary Specifications

All work done under these Contract Documents shall first be governed by **City of Lafayette's Standards and Specifications**, Latest Edition. **City of Lafayette Standards and Specifications** can be found at: http://www.cityoflafayette.com/DocumentCenter/Home/View/256

All specifications not covered in the primary specifications shall be governed by **Colorado Department of Transportation Standard Specifications for Road and Bridge Construction**, Latest Edition (See Secondary Specifications).

1.1. Asphalt Pavement

The Asphalt Pavement shall be in accordance with Section 500: City Street Construction of **City of Lafayette's Standards and Specifications**, latest revision. The Asphalt Pavement contract unit items shall meet the following requirements:

Construction Application	Paving and Patching (Bottom Lifts)
Lift Thickness	3" – 3-1/2"
Aggregate Gradation	S or SX
Mix Design Method	Superpave
Superpave Gyratory, Ndesign	75
Asphalt Binder	PG 64-22
RAP Quantity, Maximum	20 %

Construction Application	Paving and Patching (Top Lifts)
Lift Thickness	2" – 2-1/2"
Aggregate Gradation	SX
Mix Design Method	Superpave
Superpave Gyratory, Ndesign	75
Asphalt Binder	PG 64-22
RAP Quantity, Maximum	20 %

2. Secondary Specifications

All work done under these Contract Documents not covered under the primary specifications shall be governed by **Colorado Department of Transportation Standard Specifications for Road and Bridge Construction**, Latest Edition, amended as follows, including applicable revisions:

STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION

SECTION 101
DEFINITIONS AND TERMS

Section 101 of the Standard Specifications is hereby revised as follows:

The following definitions are revised:

Subsection 101.22 Contractor. The individual, firm or corporation contracting with the City of Lafayette, Colorado, for the performance of prescribed work.

Subsection 101.27 Department. The City of Lafayette, Colorado, as referred to as OWNER.

Subsection 101.28 Engineer. The City Engineer of the City of Lafayette acting directly or through the City Engineer's duly authorized representative, who is responsible for engineering and administrative supervision of the project.

Subsection 101.47 Project Engineer. The City Engineer of the City of Lafayette acting through the City Engineer's duly authorized representatives who is in direct charge of the work and is responsible for the administrative and satisfactory completion of the project under Contract.

Subsection 101.70 State. City of Lafayette, Colorado, where applicable.

SECTION 103
AWARD AND EXECUTION OF CONTRACT

Section 103 of the Standard Specifications is hereby revised as follows:

This contract is subject in all respects to the provisions of the Lafayette Municipal Code.

Subsection 103.04 Execution and Approval of Contract, is hereby revised as follows:
All reference to fifteen (15) days shall be changed to ten (10) days.

SECTION 105
CONTROL OF WORK

Section 105 of the Standard Specifications is hereby revised as follows:

Subsection 105.10 Cooperation with Utilities. Delete the first paragraph and replace with the following:

It shall be the CONTRACTOR'S responsibility to determine the exact location of utilities that may interfere with construction of this project by calling for locates and/or performing exploratory excavation sufficiently in advance of beginning construction in an area so that potential conflicts may be resolved.

It shall be the CONTRACTOR'S responsibility to make all arrangements with the utility owner(s) for utility relocations or adjustments and to coordinate the sequence of such work to eliminate possible conflicts with construction progress.

The CONTRACTOR shall provide any advance notice required by the utility owner(s) prior to commencing any work affecting said utility(ies).

Work involving changes in, or interference with, utility service shall be done at such times and in such a manner that it will cause the least interference with the proper handling and delivery of the utility service to the receiving customers. The CONTRACTOR shall notify all parties that will be affected twenty four (24) hours prior to the time service is disconnected or interrupted. All services so disconnected, interrupted, or damaged shall be immediately repaired and restored to service. Repair work shall be continuous until the service is restored. No service shall be left inoperative overnight.

Should the CONTRACTOR desire to have any modifications made to any utility facility for the CONTRACTOR'S convenience in order to facilitate their construction operations, which modifications are in addition to, or different from those indicated on the plans or in the specifications, the CONTRACTOR shall make whatever arrangements are necessary with the owners of such utility for those modifications and incur all expenses in connection therewith.

Attention is directed to the possible existence of underground facilities not known to the OWNER or in a location different from that which is indicated on the plans or in the specifications. The CONTRACTOR shall take reasonable steps to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with their service. If the CONTRACTOR discovers underground facilities not indicated on the plans or in the specifications, the CONTRACTOR shall immediately give the ENGINEER and the utility owner written notification of the existence of such facilities and coordinate the modifications of the facility as provided above.

Subsection 105.12 Construction Stakes, Lines and Grades. Delete and replace with the following:

For the most part, line, grade and location will be dictated by existing facilities. To the extent that grade stakes are needed, the ENGINEER will set such stakes or marks that the ENGINEER determines necessary to establish the lines and grades required for the completion of the work specified in the Contract Documents. When the CONTRACTOR requires such stakes or marks, the CONTRACTOR shall notify the ENGINEER in writing a reasonable length of time in advance of starting operations that require such stakes or marks. In no event, shall a notice of less than two (2) working days be considered a reasonable length of time. Failure of the CONTRACTOR to provide two (2) working days written notice of the CONTRACTOR'S staking requirements shall relieve the OWNER from any responsibility for additional costs or delays caused by such failure.

Stakes and marks set by the ENGINEER shall be carefully preserved by the CONTRACTOR. In case such stakes and marks are destroyed or damaged they will be replaced at the ENGINEER's earliest convenience. The CONTRACTOR will be charged for the cost of necessary replacement or restoration of stakes and marks which in the judgment of the ENGINEER were carelessly or willfully destroyed or damaged by the CONTRACTOR'S operations. This charge will be deducted from any monies due or to become due the CONTRACTOR.

Subsection 105.20 Acceptance, shall include the following:

Unless otherwise provided in the contract, acceptance by the OWNER will be made as promptly as practicable after completion and inspection of all work required by the contract. Acceptance will be final and conclusive except in regards to latent defects, fraud, or such gross errors as may amount to fraud, or as detailed in the OWNER'S rights under any warranty or guarantee.

SECTION 106
CONTROL OF MATERIAL

Section 106 of the Standard Specifications is hereby revised as follows:

Subsection 106.12 Certificates of Compliance, shall be added as follows:

A Certificate of Compliance shall be furnished prior to the use of any materials for which the specifications require that such a certificate be furnished. In addition, when so authorized in the specifications, the ENGINEER may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the assembled materials and shall include:

1. The City of Lafayette project number,
2. A complete description of the material,
3. The manufacturer's name,
4. The name of the product or assembly,
5. The model, catalog or stock number if applicable,
6. A lot, heat, or batch number that identifies the material delivered,
7. A statement that the product or assembly to be incorporated into the project was fabricated in accordance with and meets the applicable specifications.

A Certificate of Compliance shall be furnished with each lot of material or assembly delivered to the project and the lot, heat or batch number shall be clearly identified and match the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the CONTRACTOR of responsibility for incorporating materials in the work which conforms to the requirements of the plans and specifications and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The OWNER reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

Section 107 of the Standard Specifications is hereby revised as follows:

Subsection 107.02 Permits, Licenses and Taxes, is hereby revised as set forth in the General Conditions of these specifications.

Subsection 107.12 Protection and Restoration of Property and Landscape, is hereby revised with the addition of the following:

The fact that any underground facility is not shown on the plans or in the specifications shall not relieve the CONTRACTOR of their responsibilities as provided for in the Contract. It shall be the

CONTRACTOR'S responsibility, to ascertain the location of such underground improvements or facilities which may be subject to damage by reason of the CONTRACTOR's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all work involved in protecting or repairing property as specified in the Contract, shall be considered as included in the prices paid for the various items of work, and no additional compensation will be allowed.

All landscaping that is damaged due to construction operations shall be replaced by the CONTRACTOR at the CONTRACTOR'S expense. Lawns that are damaged by the CONTRACTOR shall be resodded by the CONTRACTOR at the CONTRACTOR'S expense, unless the CONTRACTOR obtains a written waiver from the property owner. Resodded lawns shall be watered one time by the CONTRACTOR. All costs for protecting and restoring landscaping and lawns shall be included in the prices for the various items of work and will not be measured or paid for separately.

SECTION 202
REMOVAL OF STRUCTURES AND OBSTRUCTIONS

Section 202 of the Standard Specifications is hereby revised as follows:

Subsection 202.03 Salvable Material is hereby revised as follows:

Any items the ENGINEER marks as salvable shall be removed without damage, in sections or pieces which may be readily transported, hauled and placed by the CONTRACTOR to any storage area designated by the ENGINEER. The CONTRACTOR shall safeguard salvable materials and shall be responsible for the expense of repairing or replacing damaged or missing material until it is incorporated into the work, or is loaded onto CITY equipment by the CONTRACTOR. A description of all salvable material that shall be delivered to the CITY is provided in the Special Provisions. This work shall not be paid for separately but shall be included in the applicable Contract Unit Price for the work.

SECTION 209
WATERING AND DUST PALLIATIVES

Section 209 of the Standard Specifications is hereby revised as follows:

Subsection 209. 02 Materials is hereby revised with the addition of the following:

All water required for work on this project by the CONTRACTOR will be furnished to the CONTRACTOR at a location designated by the OWNER. The CONTRACTOR shall obtain and use a meter from the CITY to record the amount of all water supplied by the City of Lafayette. This amount shall be submitted to the City of Lafayette and the CONTRACTOR shall be given an invoice for the water used. After paying the City of Lafayette the CONTRACTOR will be reimbursed for the full amount of the invoice.

The CONTRACTOR shall provide water as needed or as directed by the ENGINEER.

Subsection 209.08 Basis of Payment is hereby revised as follows:

The work performed in accordance with this item, water used for compaction, wetting, landscaping, dust control or any other use on this project will not be measured or paid for separately but shall be included in the Contract Price for the various items of work.

SECTION 627
PAVEMENT MARKING

Section 627 of the Standard Specifications is hereby revised as follows:

Subsection 627.09 Preformed Thermoplastic Pavement Marking is hereby revised with the addition of the following:

a.) USE: PreMark® Preformed Thermoplastic Pavement Markings

b.) APPLICATION:

i) Asphalt: The materials shall be applied using the propane torch method recommended by the manufacturer. The material must be able to be applied without minimum requirements for ambient and road temperatures and without any preheating of the pavement to a specific temperature. The material must be able to be applied without the use of a thermometer. The pavement shall be clean, dry and free of debris. Supplier must enclose application instructions in English and Spanish with each box/package.

c.) PACKAGING: The preformed thermoplastic markings shall be placed in protective plastic film with cardboard stiffeners where necessary to prevent damage in transit. Linear material must be cut to a maximum of 3' long pieces. Legends and symbols must also be supplied in flat pieces. The cartons in which packed shall be non-returnable and shall not exceed 40" in length and 25" in width, and be labeled for ease of identification. The weight of the individual carton must not exceed seventy (70) pounds. A protective film around the box must be applied in order to protect the material from rain or premature aging.

d.) TECHNICAL SERVICES: The successful bidder shall provide technical services as required.

e.) PERFORMANCE: The preformed thermoplastic markings shall meet state specifications and be approved for use by the appropriate state agency.