



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

STANDARD LOW BID PROJECT

April 17, 2008

TEST WELL CENTRAL UTAH CORRECTIONAL FACILITY

DEPARTMENT OF CORRECTIONS GUNNISON, UTAH

DFCM Project Number 05025110

Willowstick Technologies
11814 Election Road, Suite 100
Draper, Utah 84020

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Current copies of the following documents are hereby made part of these contract documents by reference. These documents are available on the DFCM web site at <http://dfcm.utah.gov> or are available upon request from DFCM.

DFCM General Conditions dated May 25, 2005.

DFCM Application and Certification for Payment dated May 25, 2005.

Technical Specifications :
Drawings:

The Agreement and General Conditions dated May 25, 2005 have been updated from versions that were formally adopted and in use prior to this date. The changes made to the General Conditions are identified in a document entitled Revisions to General Conditions that is available on DFCM's web site at <http://dfcm.utah.gov>

NOTICE TO CONTRACTORS

Sealed bids will be received by the Division of Facilities Construction and Management (DFCM) for:

TEST WELL – CENTRAL UTAH CORRECTIONAL FACILITY
DEPARTMENT OF CORRECTIONS – GUNNISON, UTAH
DFCM PROJECT NO: 05025110

Bids will be in accordance with the Contract Documents that will be available at 9:00 AM on Thursday, April 17, 2008, and distributed in electronic format only on CDs from DFCM, 4110 State Office Building, Salt Lake City, Utah and on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project, please contact Kurt Baxter, DFCM, at 801 538-3174. No others are to be contacted regarding this bidding process. The construction budget for this project is \$240,000.

A **non-mandatory** pre-bid meeting will be held at 10:00 AM on Tuesday, April 29, 2008 at 4114 State Office Building, Salt Lake City, Utah. All bidders wishing to bid on this project are required to attend this meeting.

Bids will be received until the hour of 3:00 PM on Tuesday, May 13, 2008 at DFCM, 4110 State Office Building, Salt Lake City, Utah 84114. Bids will be opened and read aloud in the DFCM Conference Room, 4110 State Office Building, Salt Lake City, Utah. NOTE: Bids must be received at 4110 State Office Building by the specified time.

The Division of Facilities Construction and Management reserves the right to reject any or all bids or to waive any formality or technicality in any bid in the interest of DFCM.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
Marla Workman / Contract Coordinator
4110 State Office Building, Salt Lake City, Utah 84114

PROJECT DESCRIPTION

This project includes the drilling of a test well on State Institutional Trust Lands north of Gunnison, Utah. Testing of the production rate and quality of the water shall be conducted directly following the completion of the test well. In the event that the #1 test well (Base Bid) is unsatisfactory, the owner may decide to retain the services of the contractor to drill the #2 test well (Additive Alternate No. 1) location as identified in the project drawings.

Two bid schedules have been attached. Please use the appropriate form for the type of drilling method you would propose, fill out and attach to your official DFCM Bid Form. Please refer to the project specifications and drawings, available from the DFCM website at <http://dfcm.utah.gov>

Firms that wish to bid on this project must submit documentation showing that they have been in business for at least three years, and they have successfully completed at least three similar projects. Qualifications must be submitted to DFCM by 4:00 PM on Monday, May 5, 2008.

Note: There are no bonds required for this project.

**PROJECT SCHEDULE**

| PROJECT NAME: | TEST WELL – CENTRAL UTAH CORRECTIONAL FACILITY DEPARTMENT OF CORRECTIONS – GUNNISON, UTAH | | | |
|---|--|----------------|-------------|--|
| DFCM PROJECT NO. | 05025110 | | | |
| Event | Day | Date | Time | Place |
| Bidding Documents Available | Thursday | April 17, 2008 | 9:00 AM | DFCM 4110 State Office Bldg SLC, UT and the DFCM web site * |
| Non-mandatory Pre-bid Meeting | Tuesday | April 29, 2008 | 10:00 AM | DFCM 4114 State Office Bldg SLC, UT |
| Last Day to Submit Questions and Qualifications | Monday | May 5, 2008 | 4:00 PM | Kurt Baxter – DFCM kbaxter@utah.gov Fax 801-538-3267 |
| Addendum Deadline (exception for bid delays) | Wednesday | May 7, 2008 | 2:00 PM | DFCM web site * |
| Prime Contractors Turn In Bid and Bid Bond | Tuesday | May 13, 2008 | 3:00 PM | DFCM 4110 State Office Bldg SLC, UT |
| Sub-contractor List Due | Wednesday | May 14, 2008 | 3:00 PM | DFCM 4110 State Office Bldg SLC, UT Fax 801-538-3677 |
| Substantial Completion Date | Monday | July 21, 2008 | 5:00 PM | |

* **NOTE:** DFCM's web site address is <http://dfcm.utah.gov>



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES
Division of Facilities Construction and Management

DFCM

BID FORM

NAME OF BIDDER _____ DATE _____

To the Division of Facilities Construction and Management
 4110 State Office Building
 Salt Lake City, Utah 84114

The undersigned, responsive to the "Notice to Contractors" and in accordance with the "Instructions to Bidders", in compliance with your invitation for bids for the **TEST WELL – CENTRAL UTAH CORRECTIONAL FACILITY – DEPARTMENT OF CORRECTIONS – GUNNISON, UTAH DFCM PROJECT NO. 05025110** and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required for the Work in accordance with the Contract Documents as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

BASE BID: For all work shown on the Drawings and described in the Specifications and Contract Documents to drill #1 test well, I/we agree to perform for the sum of:

_____ DOLLARS (\$ _____)
 (In case of discrepancy, written amount shall govern)

ADDITIVE ALTERNATE NO. 1: For all work shown on the Drawings and described in the Specifications and Contract Documents to drill #2 test well, I/we agree to perform for the sum of:

_____ DOLLARS (\$ _____)
 (In case of discrepancy, written amount shall govern)

I/We guarantee that the Work will be Substantially Complete by **July 21, 2008**, should I/we be the successful bidder, and agree to pay liquidated damages in the amount of **\$100.00** per day for each day after expiration of the Contract Time as stated in Article 3 of the Contractor's Agreement.

This bid shall be good for 45 days after bid opening.

The undersigned Contractor's License Number for Utah is _____.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within ten (10) days, unless a shorter time is specified in the Contract Documents.

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Bidder

ADDRESS:

Authorized Signature

INSTRUCTIONS TO BIDDERS

1. Drawings and Specifications, Other Contract Documents

Drawings and Specifications, as well as other available Contract Documents, may be obtained as stated in the Invitation to Bid.

2. Bids

Before submitting a bid, each contractor shall carefully examine the Contract Documents, shall visit the site of the Work; shall fully inform themselves as to all existing conditions and limitations; and shall include in the bid the cost of all items required by the Contract Documents. If the bidder observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the bidder shall promptly notify the DFCM Representative and the necessary changes shall be accomplished by Addendum.

The bid, bearing original signatures, must be typed or handwritten in ink on the Bid Form provided in the procurement documents and submitted in a sealed envelope at the location specified by the Invitation to Bid prior to the deadline for submission of bids.

3. Contract

The Contractor's Agreement will be in the form found in the specifications. The Contract Time will be as indicated in the bid.

4. Listing of Subcontractors

Listing of Subcontractors shall be as summarized in the "Instructions and Subcontractor's List Form", which are included as part of these Contract Documents. The Subcontractors List shall be delivered to DFCM or faxed to DFCM at (801)538-3677 within 24 hours of the bid opening. Requirements for listing additional subcontractors will be listed in the Contract Documents.

DFCM retains the right to audit or take other steps necessary to confirm compliance with requirements for the listing and changing of subcontractors. Any contractor who is found to not be in compliance with these requirements is subject to a debarment hearing and may be debarred from consideration for award of contracts for a period of up to three years.

5. Interpretation of Drawings and Specifications

If any person or entity contemplating submitting a bid is in doubt as to the meaning of any part of the drawings, specifications or other Contract Documents, such person shall submit to the DFCM Project Manager a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only

by addenda posted on DFCM's web site at <http://dfcm.utah.gov>. Neither the DFCM nor A/E will be responsible for any other explanations or interpretations of the proposed documents. A/E shall be deemed to refer to the architect or engineer hired by DFCM as the A/E or Consultant for the Project.

6. Addenda

Addenda will be posted on DFCM's web site at <http://dfcm.utah.gov>. Contractors are responsible for obtaining information contained in each addendum from the web site. Addenda issued prior to the submittal deadline shall become part of the bidding process and must be acknowledged on the bid form. Failure to acknowledge addenda may result in disqualification from bidding.

7. Award of Contract

The Contract will be awarded as soon as possible to the lowest, responsive and responsible bidder, based on the lowest combination of base bid and acceptable prioritized alternates, provided the bid is reasonable, is in the interests of the State of Utah to accept and after applying the Utah Preference Laws in U.C.A. Title 63, Chapter 56. DFCM reserves the right to waive any technicalities or formalities in any bid or in the bidding. Alternates will be accepted on a prioritized basis with Alternate 1 being highest priority, Alternate 2 having second priority, etc.

8. DFCM Contractor Performance Rating

As a contractor completes each DFCM project, DFCM, the architect/engineer and the using agency will evaluate project performance based on the enclosed "DFCM Contractor Performance Rating" form. The ratings issued on this project will not affect this project but may affect the award on future projects.

9. Licensure

The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

10. Permits

In concurrence with the requirements for permitting in the General Conditions, it is the responsibility of the Contractor to obtain the fugitive dust plan requirements from the Utah Division of Air Quality and the SWPPP requirements from the Utah Department of Environmental Quality and submit the completed forms and pay any permit fee that may be required for this specific project. Failure to

obtain the required permit may result in work stoppage and/or fines from the regulating authority that will be the sole responsibility of the Contractor. Any delay to the project as a result of any such failure to obtain the permit or noncompliance with the permit shall not be eligible for any extension in the Contract Time.

11. Right to Reject Bids

DFCM reserves the right to reject any or all Bids.

12. Time is of the Essence

Time is of the essence in regard to all the requirements of the Contract Documents.

13. Withdrawal of Bids

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

14. Product Approvals

Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the Contract Documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the A/E. Such written approval must occur prior to the deadline established for the last scheduled addenda to be issued. The A/E's written approval will be in an issued addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the A/E.

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

Contractors shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of the contractor, subcontractor or sub-subcontractor.

16. Debarment

By submitting a bid, the Contractor certifies that neither it nor its principals, including project and site managers, have been, or are under consideration for, debarment or suspension, or any action that would exclude such from participation in a construction contract by any governmental department or agency. If the Contractor cannot certify this statement, attach to the bid a detailed written explanation which must be reviewed and approved by DFCM as part of the requirements for award of the Project.



Division of Facilities Construction and

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

The three low bidders, as well as all other bidders that desire to be considered, are required by law to submit to DFCM within 24 hours of bid opening a list of **ALL** first-tier subcontractors, including the subcontractor's name, bid amount and other information required by Building Board Rule and as stated in these Contract Documents, based on the following:

DOLLAR AMOUNTS FOR LISTING

PROJECTS UNDER \$500,000: ALL FIRST-TIER SUBS \$20,000 OR OVER MUST BE LISTED
PROJECTS \$500,000 OR MORE: ALL FIRST-TIER SUBS \$35,000 OR OVER MUST BE LISTED

- Any additional subcontractors identified in the bid documents shall also be listed.
- The DFCM Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Bidder may not list more than one subcontractor to perform the same work.
- If there are no subcontractors for the job that are required to be reported by State law (either because there are no subcontractors that will be used on the project or because there are no first-tier subcontractors over the dollar amounts referred to above), then you do not need to submit a sublist. If you do not submit a sublist, it will be deemed to be a representation by you that there are no subcontractors on the job that are required to be reported under State law. At any time, DFCM reserves the right to inquire, for security purposes, as to the identification of the subcontractors at any tier that will be on the worksite.

LICENSURE:

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Bidder shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

'SPECIAL EXCEPTION':

A bidder may list 'Special Exception' in place of a subcontractor when the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to obtain a qualified or reasonable bid under the provisions of U.C.A. Section 63A-5-208(4). The bidder shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the bidder was unable to obtain a qualified subcontractor bid. The Director must find that the bidder complied in good faith with State law requirements for any 'Special Exception' designation, in order for the bid to be considered. If awarded the contract, the Director shall supervise the bidder's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

GROUNDS FOR DISQUALIFICATION:

The Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular bidder if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM
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such other reason in the best interest of the State of Utah. Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of the Director, the Director may provide notice to the contractor and the contractor shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:

Subsequent to twenty-four hours after the bid opening, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

- (1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
- (2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
- (3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
- (4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
- (5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
- (6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the Contractor establishes that the subcontractor is not qualified for the work.

EXAMPLE:

Example of a list where there are only four subcontractors:

| TYPE OF WORK | SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION" | SUBCONTRACTOR BID AMOUNT | CONTRACTOR LICENSE # |
|-------------------------|--|--------------------------|--|
| ELECTRICAL | ABCD Electric Inc. | \$350,000.00 | 123456789000 |
| LANDSCAPING | "Self" * | \$300,000.00 | 123456789000 |
| CONCRETE (ALTERNATE #1) | XYZ Concrete Inc | \$298,000.00 | 987654321000 |
| MECHANICAL | "Special Exception" (attach documentation) | Fixed at: \$350,000.00 | (TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR) |

* Bidders may list "self", but it is not required.

PURSUANT TO STATE LAW - SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS SUBCONTRACTOR LIST SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.



SUBCONTRACTORS LIST
FAX TO 801-538-3677

PROJECT TITLE: _____

Caution: You must read and comply fully with instructions.

Table with 4 columns: TYPE OF WORK, SUBCONTRACTOR, 'SELF' OR 'SPECIAL EXCEPTION', SUBCONTRACTOR BID AMOUNT, CONT. LICENSE #

We certify that:

- 1. This list includes all subcontractors as required by the instructions, including those related to the base bid as well as any alternates.
2. We have listed 'Self' or 'Special Exception' in accordance with the instructions.
3. All subcontractors are appropriately licensed as required by State law.

FIRM: _____

DATE: _____

SIGNED BY: _____

NOTICE: FAILURE TO SUBMIT THIS FORM, PROPERLY COMPLETED AND SIGNED, AS REQUIRED IN THESE CONTRACT DOCUMENTS, SHALL BE GROUNDS FOR OWNER'S REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH BIDDER. ATTACH A SECOND PAGE IF NECESSARY.

CONTRACTOR'S AGREEMENT

FOR:

THIS CONTRACTOR'S AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as "DFCM", and _____, incorporated in the State of _____ and authorized to do business in the State of Utah, hereinafter referred to as "Contractor", whose address is _____.

WITNESSETH: WHEREAS, DFCM intends to have Work performed at _____.

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

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

ARTICLE 1. SCOPE OF WORK. The Work to be performed shall be in accordance with the Contract Documents prepared by _____ and entitled "_____."

The DFCM General Conditions ("General Conditions") dated May 25, 2005 on file at the office of DFCM and available on the DFCM website, are hereby incorporated by reference as part of this Agreement and are included in the specifications for this Project. All terms used in this Contractor's Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions.

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

ARTICLE 2. CONTRACT SUM. The DFCM agrees to pay and the Contractor agrees to accept in full performance of this Contractor's Agreement, the sum of _____ DOLLARS AND NO CENTS (\$_____.00),

which is the base bid, as well as all insurance requirements of the Contractor. The required proof of insurance certificates have been delivered to DFCM in accordance with the General Conditions before the execution of this Contractor's Agreement.

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

No action shall be maintained by the Contractor, including its or Subcontractor or suppliers at any tier, against the DFCM or State of Utah for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the DFCM or its officers, employees or agents, except as expressly provided in the General Conditions. The Contractor may receive a written extension of time, signed by the DFCM, in which to complete the Work under this Contractor's Agreement in accordance with the General Conditions.

ARTICLE 4. CONTRACT DOCUMENTS. The Contract Documents consist of this Contractor's Agreement, the Conditions of the Contract (DFCM General Conditions, Supplementary and other Conditions), the Drawings, Specifications, Addenda and Modifications. The Contract Documents shall also include the bidding documents, including the Invitation to Bid, Instructions to Bidders/ Proposers and the Bid/Proposal, to the extent not in conflict therewith and other documents and oral presentations that are documented as an attachment to the contract.

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

ARTICLE 5. PAYMENT. The DFCM agrees to pay the Contractor from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The Contractor agrees to furnish to the DFCM invoices for materials purchased and on the site but not installed, for which the Contractor requests payment and agrees to

safeguard and protect such equipment or materials and is responsible for safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the DFCM may reasonably require shall be supplied by the Contractor at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without DFCM's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with UCA 13-8-5 as amended. Contractor shall also comply with the requirements of UCA 13-8-5, including restrictions of retainage regarding subcontractors and the distribution of interest earned on the retention proceeds. The DFCM shall not be responsible for enforcing the Contractor's obligations under State law in fulfilling the retention law requirements with subcontractors at any tier.

ARTICLE 6. INDEBTEDNESS. Before final payment is made, the Contractor must submit evidence satisfactory to the DFCM that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been properly paid. Final Payment will be made after receipt of said evidence, final acceptance of the Work by the DFCM as well as compliance with the applicable provisions of the General Conditions.

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

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

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

ARTICLE 9. DISPUTES. Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the General Conditions.

ARTICLE 10. TERMINATION, SUSPENSION OR ABANDONMENT. This Contractor's Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

ARTICLE 11. DFCM'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE USE THEREOF. The DFCM may withhold from payment to the Contractor such amount as, in DFCM's judgment, may be necessary to pay just claims against the Contractor or Subcontractor at any tier for labor and services rendered and materials furnished in and about the Work. The DFCM may apply such withheld amounts for the payment of such claims in DFCM's discretion. In so doing, the DFCM shall be deemed the agent of Contractor and payment so made by the DFCM shall be considered as payment made under this Contractor's Agreement by the DFCM to the Contractor. DFCM shall not be liable to the Contractor for any such payment made in good faith. Such withholdings and payments may be made without prior approval of the Contractor and may be also be prior to any determination as a result of any dispute, PRE, Claim or litigation.

ARTICLE 12. INDEMNIFICATION. The Contractor shall comply with the indemnification provisions of the General Conditions.

ARTICLE 13. SUCCESSORS AND ASSIGNMENT OF CONTRACT. The DFCM and Contractor, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Contractor's Agreement. The Contractor shall not assign this Contractor's Agreement without the prior written consent of the DFCM, nor shall the Contractor assign any moneys due or to become due as well as any rights under this Contractor's Agreement, without prior written consent of the DFCM.

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

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

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



CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT _____ PROJECT NO: _____

AGENCY/INSTITUTION _____

AREA ACCEPTED _____

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

The DFCM - (Owner) accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at _____ (time) on _____ (date).

The DFCM accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

The Owner acknowledges receipt of the following closeout and transition materials:

- As-built Drawings
- O & M Manuals
- Warranty Documents
- Completion of Training Requirements

A list of items to be completed or corrected (Punch List) is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The amount of _____(Twice the value of the punch list work) shall be retained to assure the completion of the punch list work.

The Contractor shall complete or correct the Work on the list of (Punch List) items appended hereto within _____ calendar days from the above date of issuance of this Certificate. The amount withheld pending completion of the list of items noted and agreed to shall be: \$_____. If the list of items is not completed within the time allotted the Owner has the right to be compensated for the delays and/or complete the work with the help of independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the Owner shall be promptly reimbursed for the balance of the funds needed to compensate the Owner.

_____ by: _____
CONTRACTOR (include name of firm) (Signature) DATE

_____ by: _____
A/E (include name of firm) (Signature) DATE

_____ by: _____
USING INSTITUTION OR AGENCY (Signature) DATE

_____ by: _____
DFCM (Owner) (Signature) DATE

**General Contractor Performance Rating Form**

| | | | |
|---|--|---------------------------|------------------------|
| Project Name: | | DFCM Project# | |
| Contractor: (ABC Construction, John Doe, 111-111-1111) | A/E: (ABC Architects, Jane Doe, 222-222-2222) | Original Contract Amount: | Final Contract Amount: |
| DFCM Project Manager: | | Contract Date: | |
| Completion Date: | | Date of Rating: | |

| Rating Guideline | QUALITY OF PRODUCT OR SERVICES | COST CONTROL | TIMELINESS OF PERFORMANCE | BUSINESS RELATIONS |
|-------------------------|---|--|--|--|
| 5-Exceptional | Contractor has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. Contractor performance clearly exceeds the performance levels described as "Very Good" | | | |
| 4-Very Good | Contractor is in compliance with contract requirements and/or delivers quality product/service. | Contractor is effective in managing costs and submits current, accurate, and complete billings | Contractor is effective in meeting milestones and delivery schedule | Response to inquiries, technical/service/administrative issues is effective |
| 3-Satisfactory | Minor inefficiencies/errors have been identified | Contractor is usually effective in managing cost | Contractor is usually effective in meeting milestones and delivery schedules | Response to inquires technical/service/administrative issues is somewhat effective |
| 2-Marginal | Major problems have been encountered | Contractor is having major difficulty managing cost effectively | Contractor is having major difficulty meeting milestones and delivery schedule | Response to inquiries, technical/service/administrative issues is marginally effective |
| 1-Unsatisfactory | Contractor is not in compliance and is jeopardizing achievement of contract objectives | Contractor is unable to manage costs effectively | Contractor delays are jeopardizing performance of contract objectives | Response to inquiries, technical/service/administrative issues is not effective |

| | |
|--|--------------|
| 1. Rate Contractors quality of workmanship, management of sub contractor performance, project cleanliness, organization and safety requirement. | Score |
| <u>Agency Comments:</u> | |
| <u>A & E Comments:</u> | |
| <u>DFCM Project Manager Comments:</u> | |

| | |
|--|--------------|
| 2. Rate Contractor administration of project costs, change orders and financial management of the project budget. | Score |
| <u>Agency Comments:</u> | |
| <u>A & E Comments:</u> | |
| <u>DFCM Project Manager Comments:</u> | |

| | |
|--|--------------|
| 3. Rate Contractor's performance and adherence to Project Schedule, delay procedures and requirements of substantial completion, inspection and punch-list performance. | Score |
| <u>Agency Comments:</u> | |
| <u>A & E Comments:</u> | |
| <u>DFCM Project Manager Comments:</u> | |

| | |
|---|--------------|
| 4. Evaluate performance of contractor management team including project manager, engineer and superintendent also include in the rating team's ability to work well with owner, user agency and consultants. | Score |
| <u>Agency Comments:</u> | |
| <u>A & E Comments:</u> | |
| <u>DFCM Project Manager Comments:</u> | |

| | |
|---|-------|
| 5. Rate success of Contractor's management plan, completion of the plans mitigation of project risks and performance of value engineering concepts. | Score |
| <u>Agency Comments:</u> | |
| <u>A & E Comments:</u> | |
| <u>DFCM Project Manager Comments:</u> | |

| | | |
|-------------------|--------------|-------------------|
| Signed by: | Date: | Mean Score |
|-------------------|--------------|-------------------|

Additional Comments:

PART 2

GENERAL REQUIREMENTS



GENERAL CONDITIONS

May 25, 2005

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GENERAL CONDITIONS

May 25, 2005

ARTICLE 1. GENERAL PROVISIONS.

1.1 BASIC DEFINITIONS.

A/E (including all design professionals). "A/E" means the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the A/E's Agreement and is referred to throughout the Contract Documents as if singular in number. The term "A/E" also means the A/E's representative and its subconsultants. When these General Conditions are part of a Contract in which the design professional is an interior designer, landscape subconsultant or other design professional, the term "A/E" as used in these General Conditions shall be deemed to refer to such design professional. A license is not required when the type of design professional is one which is not subject to a professional license, but such professional must meet the prevailing standards in the State of Utah for such practice. For projects where there is no A/E hired by DFCM, the references in the General Conditions to A/E shall be deemed to refer to DFCM as may be practicably applied.

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

ASI. "ASI" shall mean a Supplemental Instruction issued by the A/E to the Contractor which may result in clarifications or minor changes in the Work and does not affect the contract time or the contract amount.

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

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

CHANGE ORDER. "Change Order" means a written instrument signed by the DFCM and Contractor, stating their agreement for changes of the Contract as specified on the required DFCM's change order form.

CLAIM. "Claim" means a dispute, demand, assertion or other matter submitted by the Contractor, including a Subcontractor at any tier subject to the provisions of these General Conditions. The claimant may seek, as a matter of right, modification, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a "Claim." A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of these General Conditions are followed.

CONSTRUCTION CHANGE DIRECTIVE. A "Construction Change Directive" means a written order signed by the DFCM, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The DFCM may by Construction Change Directive, without

invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions; even if it may impact the Contract Sum and Contract Time.

CONTRACT. The Contract Documents form the Contract for Construction. The term "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the A/E and Contractor, (2) between the DFCM and a Subcontractor or (3) between any persons or entities other than the DFCM and Contractor.

CONTRACT DOCUMENTS. The term "Contract Documents" means the Contractor's Agreement between the DFCM and Contractor (hereinafter referred to as "Contractor's Agreement"), the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, Specifications, Addenda, other documents listed in the Contractor's Agreement and Modifications issued after execution of the Contractor's Agreement. The Contract Documents shall also include the bidding/proposal documents, including the Instructions to Bidders/Proposers, Notice to Contractors and the Bid/Proposal Form, to the extent not in conflict with the other above-stated Contract Documents and other documents and oral presentations as part of the Selection which are documented as an attachment to the Contract.

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

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

CONTRACTOR. The Contractor is the person or entity identified as such in the DFCM Contractor's Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case, shall mean the Contractor who executes each separate DFCM Contractor Agreement.

CONTRACTOR'S AGREEMENT.

"Contractor's Agreement" means, unless the context requires otherwise, the agreement executed by the Contractor and DFCM for the Project.

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

DEFECTIVE. "Defective" is an adjective which when modifying the word "Work" refers to Work that does not conform to the Contract Documents, or does not meet the requirements of any inspection, referenced standard, code, test or approval referred to in the Contract Documents, or has been damaged.

DFCM REPRESENTATIVE.

"DFCM Representative" means the Division of Facilities Construction and Management person directly assigned to work with the Contractor on a regular basis. Unless the context requires otherwise, the "DFCM Representative" is the "Owner's Representative."

DIRECTOR. "Director" means the Director of the Division of Facilities Construction and Management unless the context requires otherwise. Director may include a designee selected by the Director for the particular function referred to in the General Conditions.

DFCM. "DFCM" means the Division of Facilities Construction and Management established pursuant to Utah Code Annotated Section 63A-5-201 et seq. Unless the context requires otherwise, DFCM is the "Owner" as that term is commonly referred to in the construction industry.

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

EXECUTIVE DIRECTOR.

"Executive Director" means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.

INSPECTION. The word "inspection" or its derivatives shall mean a review of the Project, including but not limited to a visual review of the Work completed to date to ascertain if the Work is in accordance with the Contract Documents, including all applicable building codes and construction standards.

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

NOTICE TO PROCEED. A "Notice to Proceed" is a document prepared by the DFCM and by its terms authorizes the Contractor to commence Work on the Project. It is deemed issued upon being sent by the DFCM to the Contractor's specified address within the bid or proposal.

PARTIAL USE. "Partial Use" means placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work. This partial use does not constitute "substantial completion".

PRELIMINARY RESOLUTION EFFORT. "Preliminary Resolution Effort" or "PRE" means the processing of a request for preliminary resolution or any similar notice about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.

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

PROJECT. The "Project" means the total construction of the Work performed under the Contract Documents.

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

PROPOSAL REQUEST OR "PR."

A "Proposal Request" or "PR" is a proposal request filed with the Contractor for the purposes of seeking a proposal in order to resolve an issue as part of the Change Order or Contract Modification process.

PROPOSED CHANGE ORDER. A "Proposed Change Order" ("PCO"), is an informal request by the Contractor filed with the DFCM Representative, in an effort to commence the Contract Modification Process. It shall not be considered a "PRE" or a "Claim." The PCO may be related to any potential, or actual delay, disruption, unforeseen condition or materials or any other matter in which the Contractor intends to seek additional monies or time.

REQUEST FOR INFORMATION or RFI. A "Request for Information" or "RFI" is a request filed by the Contractor with the A/E regarding any request for information, direction or clarification related to the Contract Documents, plans or specifications.

RESOLUTION OF THE CLAIM. "Resolution of the Claim" means the final resolution of the Claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.

RULE. "Rule," unless the context requires otherwise, shall mean a Rule of the Utah Administrative Code.

SALES TAX and/or USE TAX. Sales Tax and/or Use Tax, unless the context requires otherwise, shall mean the sales tax and/or use tax collected or to be collected by the Utah State Tax Commission and shall include any sales and/or use tax that the Utah State Tax Commission collects on behalf of any special district, local government or political subdivision.

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

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

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

SUBCONTRACTOR. "Subcontractor" means the person or entity that has a direct contract with the Contractor, including any trade contractor or specialty contractor, or with another Subcontractor at any tier to provide labor or materials for the work but does not include suppliers who provide only materials, equipment or supplies to a contractor or subcontractor. Notwithstanding the foregoing, the text in which the term is used may provide for the exclusion of Subcontractors of other Subcontractors or the exclusion of suppliers. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The Term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

SUBSTANTIAL COMPLETION. "Substantial Completion" is the date certified in accordance with Article 9.2 and means the date the Work or designated portion thereof is sufficiently complete,

and any lack of completion or performance does not reasonably interfere with the DFCM's intended use of the Project, in accordance with the Contract Documents so that the DFCM can occupy and use the Work for its intended use. DFCM's "intended use" or "occupy" as used in this definition, shall include any intended use or occupation by any agency or entity for which DFCM has intended to so occupy the Project.

SUPPLEMENTARY CONDITIONS OR SUPPLEMENTARY GENERAL

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

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

ARTICLE 2. DFCM.

2.1 INFORMATION AND SERVICES REQUIRED OF THE DFCM.

2.1.1 DFCM'S REPRESENTATIVE.

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

2.1.2 SPECIALISTS AND

INSPECTORS. The DFCM will provide certified building inspection services in accordance with the adopted Building Codes. This includes 'routine' and 'special' inspections unless otherwise noted in the A/E Agreement. The DFCM may assign an inspector or specialist to note deviations from, or necessary adjustments to, the Contract Documents or to report deficiencies or defects in the Work. The inspector or specialist's activities in no way relieves the

Contractor of the responsibilities set forth in the Contract Documents.

2.1.3 SURVEYS AND LEGAL

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

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

2.1.5 COPIES OF DRAWINGS AND PROJECT MANUALS

(FOR CONSTRUCTION). Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals (for construction) as are reasonably necessary for execution of the Work. DFCM's Web Page may also provide referenced documents for the Project.

2.1.6 OTHER DUTIES. The foregoing is in addition to other duties and responsibilities of the DFCM enumerated herein and especially those in respect to Article 2.2 (Construction by DFCM or by Separate Contractors), Article 8 (Payments and Completion) and Article 10 (Insurance and Bonds).

2.2 CONSTRUCTION BY DFCM OR BY SEPARATE CONTRACTORS

2.2.1 DFCM'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.

(1) **IN GENERAL.** The DFCM reserves the right to perform construction or operations related to the Project with the DFCM's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or

substantially similar to these including those portions related to insurance and waiver of subrogation.

(2) COORDINATION AND REVISIONS.

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

2.2.2 MUTUAL RESPONSIBILITY.

(1) CONTRACTOR COORDINATION.

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

(2) REPORTING PROBLEMS TO DFCM.

If part of the Contractor's Work depends on work by the DFCM or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to the DFCM apparent defects in workmanship that would render it unsuitable for proper execution. Failure of the Contractor to make said report shall constitute an acknowledgment that the DFCM's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects in workmanship not then reasonably discoverable.

(3) **COSTS.** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party in accordance with the procedures and provisions of the Contract Documents.

(4) **CONTRACTOR REMEDIAL WORK.** The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed Work or to property of the DFCM or separate contractors and subcontractors as provided in Article 6.

ARTICLE 3. A/E.

3.1 A/E'S ADMINISTRATION OF THE CONTRACT.

3.1.1 IN GENERAL. The A/E assists the DFCM with the administration of the Contract as described in the Contract Documents. The A/E shall have the authority to act on behalf of the DFCM only to the extent provided in the Contract Documents or A/E's Agreement.

3.1.2 SITE VISITS.

(1) Site visits or inspections by the A/E, the DFCM or any DFCM representative shall in no way limit or affect the Contractor's responsibility to comply with all the requirements and the overall design concept of the Contract Documents as well as all applicable laws, statutes, ordinances, resolutions, codes, rules, regulations, orders and decrees.

(2) **WRITTEN REPORT.** The A/E shall promptly submit to the DFCM a written report subsequent to each site visit.

3.1.3 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION. Except as authorized by the DFCM Representative or as otherwise provided in the Contract Documents, including these General Conditions, the A/E and Contractor shall communicate through the DFCM Representative on issues regarding the timing of the Work, cost of the Work or scope of the Work. Contractor shall comply with communication policies agreed upon at any pre-construction meeting with the DFCM. Communications by and with the A/E subconsultants shall be through the A/E. Communications by and with Subcontractors shall be through the Contractor. Communications

by and with separate contractors shall be through the DFCM.

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

3.1.5 A/E REVIEW CONTRACTOR'S SUBMITTALS.

(1) Contractor shall submit shop drawings, product data, and samples and other submittals required by the Contract Documents to the A/E as required by the approved submittal schedule.

(2) The A/E shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the purpose of checking for conformance with the information and design concepts expressed in the Contract Documents. A/E action taken on a submittal shall not constitute a Modification of this Agreement.

(3) The A/E's action shall be taken no later than 15 days following A/E's receipt of the submittal, unless agreed to otherwise by Contractor and DFCM, in order to avoid a delay in the Work of the Contractor or of separate contractors while allowing sufficient time in the A/E's professional judgment to permit adequate review.

(4) Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents.

(5) The A/E's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract Documents.

(6) The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of any construction means, methods, techniques, sequences or procedures.

(7) The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(8) When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the A/E shall be entitled to rely upon such certifications to establish that the materials systems or equipment will meet the performance criteria required by the Contract Documents.

3.2 OWNERSHIP AND USE OF A/E'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS. All Drawings, Specifications and other documents prepared by the A/E are and shall remain the property of the DFCM, and DFCM shall retain all common law, statutory and other reserved rights with respect thereto. Said documents were prepared and are intended for use as an integrated set for the Project which is the subject of this Contractor's

Agreement. The Contractor shall not modify or use Contract Documents on any other project without the prior written consent of the DFCM and A/E. Any such non-permissive use or modification, by Contractor, the Contractor's Subcontractors at any tier or anyone for whose acts the Contractor is liable, shall be at Contractor's sole risk. Contractor shall hold harmless and indemnify the DFCM from and against any and all claims, actions, suits, costs, damages, loss, expenses and attorney fees arising out of such non-permissive use or modification by the Contractor. The Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the A/E appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the A/E. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the DFCM's copyright or other reserved rights.

ARTICLE 4. CONTRACTOR

4.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

4.1.1 REVIEWING CONTRACT DOCUMENTS, INFORMATION, REPORTING ERRORS, INCONSISTENCIES OR OMISSIONS. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the DFCM pursuant to Article 2.1 hereinabove and shall at once report to the DFCM and A/E errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the DFCM or A/E for damage resulting from errors, inconsistencies or omission in the Contract Documents, unless the Contractor recognized such error, inconsistency or omission or a Contractor of ordinary skill and expertise for the type of Work involved would have readily so recognized such error, inconsistency or omission, and the Contractor

failed to report such to the DFCM and A/E. If the Contractor performs any construction activity without such notice to the DFCM and A/E and prior to the resolution of the error, inconsistency or omission, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

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

4.1.3 PERFORM IN ACCORDANCE WITH CONTRACT DOCUMENTS AND SUBMITTALS. The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the Contract Documents

4.1.4 PERFORMANCE TO PRODUCE THE COMPLETE SYSTEM AND INTENDED RESULTS. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from the Contract Documents as being necessary to allow the system to function within its intended use.

4.1.5 INTENT AND HIERARCHY. The Contract Documents should be read as a whole and wherever possible, the provisions should be construed in order that all provisions are operable. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are

complimentary, and what is required by one Document or provisions thereof shall be as binding as if required by all the Documents or provisions thereof. In case of an irreconcilable conflict between provisions within a Contract Document or between Contract Documents, the following priorities shall govern as listed below:

(1) A particular Modification shall govern over all Contract Document provisions or Modifications issued prior to said particular Modification.

(2) Attachments to the Contractor's Agreement resulting from the Selection process including any management plan or documented interview information shall govern over addenda, the General Conditions, plans and specifications.

(3) A particular Addendum shall govern over all other Contract Document provisions issued prior to said particular Addendum. Subsequent Addenda shall govern over all prior Addenda.

(4) The Supplementary General Conditions shall govern over the General Conditions.

(5) These General Conditions shall govern over all other Contract Documents except for the Supplementary General Conditions, Addenda, Modifications and Attachments resulting from the selection process.

(6) The drawings and specifications shall not govern over any of the documents listed above.

(7) In case of a conflict or ambiguity within the same level of hierarchy of described documents, DFCM reserves the right to select the most stringent requirement unless the preponderance of the contract indicates the less stringent requirement.

4.1.6 DIVIDING WORK AND CONTRACTOR REPRESENTATION.

Organization of the specifications into divisions, sections and articles, and arrangement of Drawings, shall not control the Contractor in

dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor represents that the Subcontractors, Sub-subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations.

4.1.7 PLANNING AND PRIORITY.

The Contractor shall plan and schedule its work to facilitate the Project and shall maintain a work schedule to place proper priority to sequence work to complete the project timely.

4.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

4.2.1 SUPERVISION AND

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

4.2.2 RESPONSIBILITY.

The Contractor shall be responsible to the State of Utah and DFCM for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor or on behalf of the Contractor.

4.2.3 NOT RELIEVED OF

OBLIGATIONS. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the DFCM or its agents in the DFCM's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor or for those that the Contractor is liable.

4.2.4 INSPECTIONS AND APPROVALS.

(1) The Contractor is responsible for requesting inspections for various

stages and portions of the Work required under the Contract Documents in a timely manner.

(2) If any of the Work is required to be inspected or approved by the terms of the Contract Documents by any public authority, the Contractor shall timely request such inspection or approval to be performed in accordance with Article 9. Except as provided in Article 9, work shall not proceed without any required inspection and the associated authorization to proceed. Contractor shall promptly notify DFCM if the inspector fails to appear at the site.

4.3 LABOR AND MATERIALS.

4.3.1 PAYMENT BY CONTRACTOR.

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

4.3.2 DISCIPLINE AND

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

4.4 TAXES AND OTHER PAYMENTS TO GOVERNMENT.

The Contractor shall pay sales, consumer, use, employment-related and similar taxes related to the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall comply with the laws and regulations regarding the payment of Sales and/or Use Tax and any exemptions. The procurement documents may have a provision regarding specific items which are exempt from State of Utah Sales Tax and/or Use Tax. Any such

exemption shall be used only for the items and the project specified in the procurement documents. Any such exemption does not apply to taxes levied by the federal government or any taxing entity outside of the State of Utah. If a Contractor properly relies upon a provision(s) of the bidding or proposal documents, and if State of Utah Sales and/or Use Tax subsequently becomes due, then the Contractor shall be paid such tax amount not included in the bid/proposal amount due to the reliance upon such provision.

4.5 PERMITS, FEES, NOTICES, LABOR AND MATERIALS.

4.5.1 PERMITS AND FEES. Unless required in the Supplementary General Conditions or an Addendum, it will not be necessary for the Contractor to obtain or pay for local building permits, plan check fees, electrical permits, plumbing permits, connection fees, or impact fees, nor will it be necessary to pay fees for inspections pertaining thereto.

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

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

4.5.4 FAILURE TO GIVE NOTICE. If the Contractor, or any Subcontractor thereof performs Work without complying with the requirements of this Article 4.5 hereinabove, the Contractor shall assume appropriate responsibility

for such Work and shall bear the appropriate amount of the attributable costs.

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

4.7 TIME AND CONTRACTOR'S CONSTRUCTION SCHEDULES.

4.7.1 PROGRESS AND COMPLETION.

(1) **TIME IS OF THE ESSENCE; COMPLETE WITHIN CONTRACT TIME.** Time is of the essence. By executing the Contractor's Agreement, the Contractor confirms that the Contract Time is adequate to perform the Work. The Contractor shall proceed expeditiously with adequate forces to achieve Substantial Completion within the Contract Time.

(2) **NOTICE TO PROCEED AND INSURANCE.** The Contractor shall not prematurely commence operations on the site or elsewhere prior to the issuance of a Notice to Proceed by the DFCM or prior to the effective date of insurance required by Article 10 to be furnished by the Contractor, whichever is the latter.

4.7.2 SCHEDULE PREPARATION. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the DFCM's and A/E's review, a reasonably detailed CPM schedule for the Work. The schedule shall indicate the order, sequence, and interdependence of all items known to be necessary to complete the Work including construction, procurement, fabrication, and delivery of materials and equipment, submittals and approvals of samples, shop drawings, procedures, or other documents. Work items of the DFCM, other Contractors, utilities and other third parties that may affect or

be affected by the Contractor shall be included. If the DFCM is required, by the Contract Documents, to furnish any materials, equipment, or the like, to be incorporated into the Work by the Contractor, Contractor shall submit, with the first schedule submittal, a letter clearly indicating the dates that such items are required at the Project Site. The critical path should be identified, including the critical paths for interim completion dates and milestones. The CPM schedule shall be developed using Primavera, MS Project, or Suretrack unless otherwise authorized by the DFCM Representative. The Contractor's schedule shall be updated at least once a month and submitted with each pay request.

4.7.3 INITIAL CONTRACT TIME

Unless otherwise specified in the bidding documents, the initial Contract Time is the time identified in the Contractor's Agreement.

4.7.4 INTERIM COMPLETION

DATES AND MILESTONES. The schedule must include contractually specified interim completion dates and milestones. The milestone completion dates indicated are considered essential to the satisfactory performance of this Contract and to the coordination of all Work on the Project. The milestone dates listed are not intended to be a complete listing of all Work under this Contract or of interfaces with other Project Contractors.

4.7.5 SCHEDULE CONTENT

REQUIREMENTS. The schedule shall indicate an early completion date for the Project that is no later than the Project's required completion date. The schedule, including all activity duration's shall be given in calendar days. The Schedule shall also indicate all of the following:

- (1) Interfaces with the work of outside contractors (e.g., utilities, power and with any separate Contractor);
- (2) Description of activity including activity number/numbers;
- (3) Estimated duration time for each activity;

(4) Early start, late start, early finish, late finish date, and predecessor/successors including stop-start relationships with lead and lag time for each activity;

(5) Float available to each path of activities;

(6) Actual start date for each activity begun;

(7) Actual finish date for each activity completed;

(8) The percentage complete of each activity in progress or completed;

(9) Identification of all critical path activities;

(10) The critical path for the Project, with said path of activities being clearly and easily recognizable on the time-scaled network diagram. The path(s) with the least amount of float must be identified. Unless otherwise authorized by the DFCM Representative, no more than 40% of all activities may be identified as critical path items. The relationship between non-critical activities and activities on the critical path shall be clearly shown on the network diagram;

(11) Unless otherwise authorized by the DFCM Representative, all activities on the schedule representing construction on the site may not have a duration longer than 14 days. Construction items that require more than 14 days to complete must be broken into identifiable activities on the schedule with durations less than 14 days. The sum of these activities represents the total length required to complete that construction item; and

(12) Additional requirements as specified in the Supplemental General Conditions.

4.7.6 DFCM'S RIGHT TO TAKE

EXCEPTIONS. The DFCM reserves the right to take reasonable exception to activity duration, activity placement, construction logic or time frame for any element of the Work to be scheduled.

4.7.7 FLOAT TIME. Float or slack time is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date of a chain of activities on the Schedule. By a proposal request or modification delivered to the Contractor, the DFCM has the right to use the float time for non-critical path activities until the Contractor has reallocated such time on a newly submitted schedule.

4.7.8 INITIAL SCHEDULE SUBMISSION. No progress payments will be approved until the Contractor has submitted a Project detailed CPM schedule covering the first 90 days of the Work with a general CPM schedule for the entire project. The detailed schedule for the entire project is to be completed prior to the second pay request unless otherwise authorized in writing by the DFCM Representative.

4.7.9 UPDATES. Prior to any approval of a pay request, the DFCM, A/E and Contractor shall review the Contractor's schedule compared to the Work completed. The DFCM approves the amount of Work completed as supported by the schedule of values and as verified by the determination of Work completed. If necessary, the Contractor shall then update and submit to the DFCM the schedule with the pay request; all of which in accordance with the DFCM's approval. All updates shall be provided in electronic and hard copy formats. At each scheduled meeting with the DFCM Representative, the Contractor shall provide a "three week look ahead" with long lead items identified.

4.7.10 SCHEDULE OF SUBMITTALS. The Contractor shall prepare and keep current, for the A/E's and DFCM's review, a schedule of submittals required under the Contract Documents which is coordinated with the Contractor's construction schedule and allows the A/E a reasonable time to review the submittals. This submittal schedule is to be included as part of the construction schedule. Submittals requiring expedited review must be clearly identified as such in the schedule of submittals.

4.7.11 SCHEDULE RECOVERY. If the Work represented by the critical path falls behind

more than 7 days, the project schedule shall be redone within 14 days showing how the Contractor shall recover the time. A narrative that addresses the changes in the schedule from the previously submitted schedule shall be submitted along with the schedule in both hard copy (appropriate report formats to be determined by the DFCM Representative) and electronic copy. The Contractor shall comply with the most recent schedules.

4.7.12 SCHEDULE CHANGES AND MODIFICATIONS.

(1) **CONTRACT TIME CHANGE REQUIRES MODIFICATION.** The Contract Time may only be shortened or extended by a written modification fully executed by the DFCM.

(2) **CONTRACTOR REORDERING, RESEQUENCING AND CHANGING ACTIVITY DURATIONS.** Should the Contractor, after approval of the complete detailed construction schedule, desire to change his plan of construction, he shall submit his requested revisions to the DFCM and the A/E along with a written statement of the revisions including a description of the sequence and duration changes for rescheduling the work, methods of maintaining adherence to intermediate milestones and the contract completion date and the reasons for the revisions. If the requested changes are acceptable to the DFCM, which acceptance shall not be unreasonably withheld, they will be incorporated into the Schedule in the next reporting period. If after submitting a request for change in the Contract Schedule, the DFCM does not agree with the request, the DFCM will schedule a meeting with the Contractor to discuss the differences.

(3) **CHANGES IN CONTRACT TIME.** The critical path schedule as the term is used in the provisions herein shall be based on the current version of the Contractor's schedule for the Project and accepted by the DFCM just prior to the commencement of the modification, asserted delay, suspension or interruption. If the Contractor believes it is entitled to an extension of Contract Time under the Contract Documents, the Contractor shall submit a

PCO in accordance with Article 7.2 to the A/E and the DFCM Representative accompanied by an analysis ("Requested Time Adjustment Schedule") in accordance with the Contract Documents for time extensions. The "Requested Time Adjustment Schedule" shall include "fragnets" that represent the added or changed work to the Schedule. The impact on unchanged activities caused by the changes and/or delays being analyzed shall be included in these fragnets.

A "fragnet" as used in these General Conditions and when used in the context of project scheduling is a subset of project activities that are inter-related by predecessor and successor relationships that are tied into the main schedule with identified start and completion points. Each fragnet may or may not be on the critical path. An entire schedule consists of a series of inter-related fragnets.

4.7.13 EXCUSABLE DELAY.

(1) **IN GENERAL.** If the Contractor is delayed at any time in the progress of the Work on the critical path schedule by an act or neglect of the DFCM or other causes beyond the Contractor's control or by other causes which the DFCM determines may justify delay, then the Contract Time shall be extended by Change Order. The Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay. Notwithstanding the above, to the extent any of the causes for delay were caused by the Contractor, reasonably foreseeable by the Contractor or avoidable by the Contractor, then to such extent the delay shall not be cause for extension of the Contract Time. For purposes of this paragraph, Contractors shall include all subcontractors and others under the responsibility of the Contractor

The determination of the total number of days extension will be based upon the current construction schedule in effect at the inception of the change and/or delay and upon all data relevant to the extension as it exists in the project record. Once approved, such data shall be incorporated in the next monthly update of the schedule.

Contractor acknowledges and agrees that delays in work items which, according to the schedule analysis, do not affect any milestone dates or the

Contract completion dates shown on the CPM at the time of the delay, will not be the basis for a contract extension.

(2) **WEATHER-RELATED EXCUSABLE DELAYS.** Completion time will not be extended for normal bad weather or any weather that is reasonably foreseeable at the time of entering into the contract. The time for completion as stated in the contract documents includes due allowance for calendar days on which Work cannot be performed out of doors. The Contractor acknowledges that it may lose days due to weather conditions. Contract time may be extended at no cost to the DFCM if all of the following are met which must be established by the Contractor:

(a) That the weather prevented Work from occurring that is on the critical path for the project based upon a critical path schedule previously submitted to the DFCM and to the extent accepted by the DFCM;

(b) There are no concurrent delays attributed to the Contractor;

(c) The Contractor took all reasonable steps to alleviate the impact of the weather and took reasonable attempts to prevent the delay and despite such reasonable actions of Contractor, the weather impacted the critical path as described above; and

(d) One of the following occurred:

1. The weather was catastrophic, such as a tornado, hurricane, severe wind storm, severe hail storm; or

2. Based on the full history of information published from the closest station as indicated from the Western Regional Climate Center (Desert Research Institute 2215 Raggio Parkway Reno, Nevada 89512, and as may be described on the website at <http://www.wrcc.dri.edu/summary/>), one or more of the following occurred:

a. For any day between November 1 and March 31, the

minimum temperature fell below the average minimum temperature plus the extreme low temperature recorded for the month divided by 2.

b. For any day between November 1 and March 31, the maximum temperature fell below the monthly average for the minimum temperature.

c. The daily precipitation exceeded 75% of the historical one day maximum for the month.

d. The snowfall for the month exceeded 175% of the historical average snow fall for the month.

4.7.14 COMPENSABLE DELAY, SUSPENSION OR INTERRUPTION.

(1) BASIC CONDITIONS.

In addition to the other requirements of the Contract Documents, a compensable delay, suspension or interruption of the work occurs only when the following are met:

(a) Is wholly unanticipated by the parties at the time of execution of the Contractor's Agreement or is caused by the breach of a fundamental obligation of the Contract Documents attributable to the DFCM; and

(b) The Contractor delivers a written notice to A/E and DFCM within seven (7) days that the Contractor knows or should have known of the condition giving rise to the purported compensable delay, disruption, suspension or interruption, and said continuation affects the Contract Time as indicated by the last submitted and reasonable critical path schedule.

(2) COMPENSABLE DELAY FORMULA. To the extent of the compensable delay, the Contractor's total entitlement for all compensable delay damages is the computed result of the following formula: Contract Sum divided by Contract Time (in calendar days); the result of which is then multiplied by 0.05; and the result of which is multiplied by the number of calendar days of compensable days allowed under these General Conditions that are beyond the Contract

Time. Notwithstanding any other provision of these General Conditions or the Contract Documents, to the extent the Contractor is entitled to receive the 10% or 15% markup under Article 7.4, this provision shall be inapplicable and the markup shall be deemed to include all the compensable delay damages provided by this paragraph.

(3) PERIOD OF COMPENSABLE DELAY, SUSPENSION OR INTERRUPTION. The length and extent of compensable delay, shall be determined, with the use of the Project's critical path schedule, by ascertaining the number of additional days to the Contract Time that are needed in order to perform the Work in accordance with the Contract Documents as a result of the continuation of the aforesaid delay, disruption, suspension or interruption after receipt of the written notice received by the A/E and DFCM under Section 4.7.14(1)(b) above.

(4) CONCURRENT DELAY. Notwithstanding any other provision of these General Conditions, to the extent a non-compensable delay occurs at the same time as a compensable delay, the DFCM shall not be responsible for any compensation for the period of the non-compensable delay.

4.7.15 TIME EXTENSION REQUESTS. Any time extension shall be requested within 21 days after the Contractor knew or should have known about the delay and shall be supported by the critical path schedule analysis.

4.7.16 LIQUIDATED DAMAGES.

(1) IN GENERAL. Should the Contractor fail to complete the Work within the Contract Time, there shall be deducted from any amount due or that may become due the Contractor, the sum as stated in the Contractor's Agreement. Such sum is fixed and agreed upon by the DFCM and Contractor as liquidated damages due the DFCM by reason of the inconvenience and added costs of administration, engineering, supervision and other costs resulting from the Contractor's default, and not as a penalty. Actual damages related to delay can not be ascertained at

the time of execution of the Contract. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such excess to the DFCM. DFCM may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding any other provision of these General Conditions, the availability of liquidated damages to the DFCM shall not limit the DFCM's right to seek damages or other remedies available under law or equity to the extent such damages or remedies are not based upon delay.

(2) NO WAIVER OF DFCM'S RIGHTS. Permitting the Contractor to continue any part of the Work after the time fixed for completion or beyond any authorized extension thereof, shall in no way operate as a waiver or estoppel on the part of the DFCM of any of its rights under the Contract Documents, including the right to liquidated damages or any other remedies or compensation.

4.8 DOCUMENTS AND SAMPLES AT THE SITE, CERTIFYING "AS-BUILTS". The Contractor shall maintain at the site for the DFCM, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked weekly to record changes and selections made during construction, as well as approved Shop Drawings, Product Data, Samples and similar submittals. These aforesaid items shall be available to the A/E and shall be delivered to the A/E for submittal to the DFCM upon completion of the Work, signed by the Contractor, certifying that they show complete and exact "as-built" conditions, stating sizes, kind of materials, vital piping, conduit locations and similar matters. All notes of encountered or changed conditions shall be included.

4.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

4.9.1 NOT CONTRACT DOCUMENTS. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The submittal shall demonstrate, for those portions of the Work for which the submittal is required,

the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.9.2 PROMPTNESS. The Contractor shall review, approve and submit to the A/E, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work, or the activities of the DFCM or separate contractors.

4.9.3 NOT PERFORM UNTIL A/E APPROVES. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the A/E. Such Work shall be in accordance with the approved submittals.

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

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

4.9.6 DIRECT SPECIFIC ATTENTION TO REVISIONS. The Contractor shall direct specific attention in writing to all revisions on resubmitted Shop Drawings, Product Data, Samples or similar submittals, except those

requested by the A/E and indicated on previous submittals.

4.9.7 INFORMATIONAL SUBMITTALS. Informational submittals upon which the A/E is not expected to take responsive action may be so identified in the Contract Documents.

4.9.8 RELIANCE ON PROFESSIONAL CERTIFICATION. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the DFCM and A/E shall be entitled to rely upon the accuracy and completeness of such calculations and certifications. If a professional stamp is required, the professional shall be licensed in the State of Utah unless otherwise approved by the DFCM in writing. Likewise, the Contractor is entitled to rely upon the accuracy and completeness of the calculations made by the A/E in developing the Contract Documents, unless a Contractor of ordinary skill and expertise for the type of Work involved would know that such is inaccurate or incomplete and therefore must immediately notify the DFCM in writing.

4.10 USE OF SITE.

4.10.1 IN GENERAL. The Contractor shall confine operations at the site to areas permitted by the Contract Documents, law, ordinances, resolutions, rules and regulations, and permits and shall not unreasonably encumber the site with materials or equipment. Contractor shall take all reasonable means to secure the site, protect the site and protect the Work from any damage. The site shall be left free and clear of refuse, equipment, materials, etc. and the site shall not be subject to spilled liquids and chemicals, toxic or otherwise. Should such an incident occur while the Contractor has control of the site, the Contractor shall be responsible to clean the site and pay all associated costs, fines and penalties. Notwithstanding this, Contractor is not responsible for any damage to the site or the Work to the extent caused by the DFCM or the DFCM's agents.

4.10.2 ACCESS TO NEIGHBORING PROPERTIES. The Contractor shall not, except

as provided in the Contract Documents or with the DFCM's advance written consent when necessary to perform the Work, interfere with access to properties neighboring the Project site by the owners of such properties and their respective tenants, agents, invitees and guests.

4.11 ACCESS TO WORK. The Contractor shall provide the DFCM and A/E access to the Work in preparation and progress, wherever located.

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

4.13 INDEMNIFICATION.

4.13.1 IN GENERAL.

(1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State of Utah, the State of Utah's institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to an "indemnities") from and against every kind and character of claims, damages, losses and expenses, including but not limited to attorneys' fees, and including those events covered under the blanket Contractual Liability Coverage required under the Contract Documents, arising out of or resulting from any act or omission in the performance of the Work including the work of all the Subcontractors and their employees, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent or wrongful act or omission

of the Contractor, any Subcontractor, and their employees, provided that any such claim, damage loss or expense is caused in whole or in part by the negligent or intentional act or omission of the Contractor, any Subcontractor, or anyone directly or indirectly employed or the agent of any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder. Notwithstanding any of the above, to the extent the Contractor is complying with a written directive from the DFCM, that is not based on the Contractor's recommendation, the Contractor shall not be held liable under the indemnification provision of this Agreement if the Contractor has promptly disagreed with the written directive by delivering such objection to the DFCM in writing.

(2) Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under Contract Documents.

(3) In claims against any person or entity indemnified under this Article 4.13 by an employee of the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 3.13 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts

ARTICLE 5. SUBCONTRACTORS.

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

5.1.1 APPROVAL REQUIRED.

(1) Listing of Subcontractors shall be as required by U.C.A. 63A-5-208 as amended and/or as stated in the Contract Documents, including but not limited to the "DFCM Subcontractors List Form".

(2) The Contractor shall not contract with a proposed person or entity to whom the DFCM has made a reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection

5.1.2 BUSINESS AND LICENSING REQUIREMENTS. All Subcontractors used by the Contractor shall comply with all applicable business and licensing requirements.

5.1.3 SUBSEQUENT CHANGES. After the lapse of twenty-four (24) hours from the bid opening, the Contractor may change its listed Subcontractors only in accordance with Rule R 23-1 and the Contract Documents and with written approval of the Director of the Division of Facilities Construction and Management.

(1) DFCM will pay the additional costs for a DFCM requested change in subcontractor if all of the following are met:

(a) If the DFCM in writing requests the change of a subcontractor;

(b) The original subcontractor is a responsible subcontractor that meets the requirements of the Contract Documents; and

(c) The original subcontractor did not withdraw as a subcontractor on the project.

(2) In all other circumstances, the Contractor shall pay the additional cost for a change in a subcontractor.

5.1.4 BONDING OF SUBCONTRACTORS. Subcontractors as identified by DFCM in the procurement documents, may be required to submit

performance and payment bonds to cover the full extent of their portion of the Work. This provision does not in any way limit the right of the Contractor to have subcontractors at any tier be required to have a performance and/or payment bond.

5.2 SUBCONTRACTUAL RELATIONS.

5.2.1 COMPLY WITH CONTRACT DOCUMENTS. By appropriate enforceable agreement, and to the extent it can be practically applied, the Contractor shall require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes towards the DFCM and A/E.

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

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

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

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

5.3.1 CONDITIONS FOR ASSIGNMENT TO DFCM. Each subcontract agreement for a subcontractor at any tier for a portion of the Work is assigned by the Contractor to the DFCM provided that the assignment is effective only after termination of the Contract by the DFCM for cause pursuant to Article 12.2 or stoppage of the Work by DFCM pursuant to Article 12.5, and only for those subcontract agreements which the DFCM accepts by notifying the Subcontractor in writing. The subcontract shall be equitably adjusted to meet the new conditions of the work.

ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY.

6.1 SAFETY OF PERSONS AND PROPERTY.

6.1.1 CONTRACTOR RESPONSIBILITY. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) Employees on the Work and other persons who may be affected thereby;

(2) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or a Subcontractor; and

(3) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.1.2 SAFETY PROGRAM, PRECAUTIONS. The Contractor shall institute a safety program at the start of construction to minimize accidents. Said program shall continue to the final completion of the Project and conform to applicable laws and regulations including the Utah Occupational Safety and Health Rules and

Regulations as published by the Utah Industrial Commission - UOSH Division. The Contractor shall post signs, erect barriers, and provide those items necessary to implement the safety program. As soon as the Contractor proceeds with the Work, the Contractor shall have all workers and all visitors on the site wear safety hard hats, as well as all other appropriate safety apparel such as safety glasses and shoes, and obey all safety rules and regulations and statutes. The Contractor shall post a sign in a conspicuous location indicating the necessity of wearing hard hats and the Contractor shall loan such hats to visitors.

6.1.3 COMPLIANCE WITH LAWS.

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

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

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

6.1.6 PROMPT REMEDY. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Paragraph 6.1.1 of these General Conditions caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by

anyone for whose acts they may be liable and for which the Contractor is responsible under said Paragraph 6.1.1, except to the extent such damage or loss is directly due to errors in the Contract Documents or caused by agents or employees of the A/E or DFCM. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under the Contract Documents.

6.1.7 SAFETY DESIGNEE.

The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents, damage, injury or loss. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the DFCM and A/E.

6.1.8 LOAD SAFETY.

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

6.1.9 OFF-SITE RESPONSIBILITY.

In addition to its other obligations under this Article 6, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, streets, ways, sidewalks, curbs and the property of the State and third parties (including municipalities and other governmental agencies) resulting from the performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall not cause materials, including soil and debris, to be placed or left on streets or ways.

6.1.10 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall promptly notify the DFCM Representative of the action taken.

6.2 HAZARDOUS MATERIALS. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or any other hazardous waste or substance which may endanger the health of those persons performing the Work or being on the site, the Contractor shall immediately stop Work in the area affected and

immediately report the condition to the DFCM Representative and A/E by phone with a follow-up document in writing. The Work in the affected area shall be resumed when written direction is provided by the DFCM Representative. Except to the extent provided otherwise in the Contract Documents or if the presence of hazardous materials is due to the fault of the Contractor, the Contractor shall not be required to perform without the Contractor's consent, any Work relating to asbestos, polychlorinated biphenyl (PCB) or any other hazardous waste or substance

DFCM shall procure a licensed abatement contractor qualified to remove the hazardous material. The abatement contractor shall submit notification of demolition to the Utah Division of Air Quality. Abatement contractor shall pay the notification fee. A copy of the hazardous material survey report shall be available to all persons who have access to the construction site.

6.3 HISTORICAL AND

ARCHEOLOGICAL CONSIDERATIONS. In the event the Contractor knows or should have known of any cultural, historical or archeological material that is either recognized as an item to be protected under Federal, State, or local law or regulation, or is an item of obvious value to the State of Utah, the Contractor shall cease any work that would interfere with such discovery and immediately report the condition to the DFCM Representative and A/E by phone with a follow-up document in writing. Work shall resume based upon the direction of the DFCM Representative. Contractor cooperation with any DFCM recognized archaeologist or other cultural/historical expert is required.

6.4 CONTRACTOR LIABILITY. If the Contractor fails in any of its obligations in Articles 6.1 through 6.3 above, the Contractor shall be liable to any damages to DFCM, the State of Utah or any third party resulting from such noncompliance. The Contractor shall also be liable for any mitigation or restoration effort resulting from such noncompliance. To the extent all the following is met, the Contractor may treat the discovery of such material similarly to an unforeseen condition:

6.4.1 The discovery of such material is reasonably unforeseeable given the site conditions that the Contractor should have been aware;

6.4.2 The presence of such material was not identified in any part of the Contract Documents;

6.4.3 The Contractor has undertaken all proper action to mitigate any impact of such discovery on the critical path or monies related to the Project;

6.4.4 The discovery affects the critical path or contract price from that which was contemplated by the Contract Documents; and

6.4.5 The requirements of 7.1.5 and the Contract documents are met.

ARTICLE 7. MODIFICATIONS, REQUEST FOR INFORMATION, PROPOSED CHANGE ORDER, PRELIMINARY RESOLUTION EFFORTS AND CLAIMS PROCESS.

7.1 MODIFICATIONS: IN GENERAL.

7.1.1 TYPES OF MODIFICATIONS AND LIMITATIONS. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or ASI, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor must have a written Modification executed by DFCM under this Article 7 prior to proceeding with any Work sought to be an extra.

7.1.2 BY WHOM ISSUED. A Change Order or Construction Change Directive shall be issued by the DFCM Representative. An ASI is issued by the A/E or by the DFCM Representative.

The A/E shall prepare Change Orders and Construction Change Directives with specific documentation and data for the DFCM's approval and execution in accordance with the Contract Documents, and may issue ASIs not involving an adjustment in the contract sum or an extension of the Contract Time which are not

inconsistent with the intent of the Contract Documents.

7.1.3 CONTRACTOR TO PROCEED UNLESS OTHERWISE STATED.

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

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

7.1.5 SPECIAL NOTICES REQUIRED IN ORDER TO BE ELIGIBLE FOR ANY CONTRACT MODIFICATION. In order to be eligible for any Modification under this Article 7, the Contractor must have met the following special notice requirements:

(1) **CONCEALED OR UNKNOWN CONDITIONS.** The Contractor must file a written notice with the DFCM Representative within seven (7) calendar days of that the Contractor knew or should have known of a site condition described below or the Contractor shall be deemed to waive any right to file any PCO, PRE or Claim for additional monies or time related to such condition:

(a) If the Contractor encounters unknown and reasonably unforeseeable subsurface or otherwise concealed physical conditions, including hazardous or historical/cultural materials under Article 6, which differ materially from those indicated by the Contract Documents or a site inspection; or

(b) If the Contractor encounters unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized

as inherent in construction activities of the character provided for in the Contract Documents.

(2) **INCREASE IN CONTRACT TIME.** If the Contractor encounters a situation in which the Contractor knows or should have known that such situation would cause a delay, disruption, interruption, suspension or the like to the Project, the Contractor must file a notice with the DFCM Representative within seven (7) working days of when the Contractor knew or should have known of such circumstance or the Contractor shall be deemed to waive any right to file any PCO, PRE or Claim for additional monies or time related to such circumstance. To the extent the DFCM and/or the State of Utah is damaged by the failure of the Contractor to provide such notice after the Contractor knows or should have known of such circumstance, the Contractor shall be liable for liquidated damages attributable thereto, as well as any damages to the State of Utah and/or DFCM that are allowable in addition to liquidated damages.

7.2 CONTRACTOR INITIATED REQUESTS.

7.2.1 THE REQUEST FOR INFORMATION, RFI, PROCESS AND TIME TO FILE. The Contractor may file an RFI with the A/E regarding any concern which will assist the Contractor in the proper completion of the Work including, but not limited to issues related to the Contract Documents, plans and specifications. The RFI shall be filed with the A/E in a timely manner so as not to prejudice the DFCM as to the quality, time or money related to the Work.

7.2.2 PROPOSED CHANGE ORDER ("PCO"). Within twenty-one (21) days after the Contractor knows or should have known of a situation or concern where the Contractor is going to request additional monies or time, the Contractor must file a Proposed Change Order ("PCO") with the DFCM Representative, or the Contractor shall be deemed to waive any right to claim additional monies or time related to such situation or concern. The PCO shall include all available documentation supporting the PCO available to the Contractor at the time of filing and the Contractor shall thereafter diligently pursue the

supplementation(s) of such documentation and promptly deliver such supplementation(s) to the DFCM Representative

(1) **DFCM REPRESENTATIVE RESPONSE.** One of the following may occur after a PCO is filed with the DFCM Representative:

(a) The DFCM Representative, after considering any input by the A/E, may reach an agreement with the Contractor and issue a Change Order.

(b) The DFCM, after considering any input by the A/E, may issue a Construction Change Directive.

(c) If the DFCM Representative, after considering any input by the A/E, disagrees with the Contractor's PCO, the DFCM representative may seek additional information or verification from the Contractor, the A/E or other sources, may negotiate with the Contractor, may issue a Change Order upon such later agreement, may retract the PR, or may issue a Construction Change Directive.

(d) If a Construction Change Directive is issued which identifies the DFCM Representative's position in regard to the subject contract sum and/or time adjustment or if the PCO is denied by the DFCM Representative, the Contractor must file a PRE under Article 7.7 below no later than twenty-one (21) days after the Contractor's receipt of the Construction Change Directive or such denial of the PCO. Failure to file a PRE in these instances shall be deemed to waive any right to additional time or money related to the PCO, Construction Change Directive or denial of the PCO. Such waiver shall entitle the DFCM to convert the Construction Change Directive into a Change Order, whether or not executed by the Contractor.

If the Construction Change Directive leaves open the determination of additional time or money related to the directed change, then the time period for commencement of filing the PRE shall not accrue until such time as the DFCM has conveyed to the Contractor a position as to the time and money owing as a result of the directed change.

The A/E must continually work with the DFCM in providing data, documentation and efforts to resolve the issues related to the PR.

7.3 PROPOSAL REQUEST INITIATED BY DFCM. DFCM may file a Proposal Request with the Contractor seeking information, data and/or pricing relating to a change in the contract time and or monies owing for particular scope changes or other modifications to the Contract Documents. The PR shall provide a time limit for the Contractor to file a response with the A/E and the DFCM Representative. If a proposal is not timely provided by the Contractor, DFCM may calculate the Change Order under Article 7.4.2 below. Upon such timely receipt of the proposal, one of the following shall occur:

7.3.1 IF AGREEMENT, CHANGE ORDER ISSUED. The DFCM Representative, after considering any input by the A/E, may reach an agreement with the Contractor and issue a Change Order.

7.3.2 IF DISAGREEMENT. If the DFCM Representative disagrees with the Contractor's proposal, after considering any input from the A/E, the DFCM representative may seek additional information or verification from the Contractor or other sources, may negotiate with the Contractor, may issue a Change Order upon such later agreement, may retract the PR, or may issue a Construction Change Directive. If a Construction Change Directive is issued which identifies the DFCM representative's position in regard to the subject contract sum and/or time adjustment, the Contractor must file a PRE within twenty-one (21) days of the Contractor's receipt of the Construction Change Directive, or the Contractor shall be deemed to waive any such request for additional time or money as a result of the issuance of the Construction Change Directive. Such waiver shall entitle the DFCM to convert the Construction Change Directive into a Change Order, whether or not executed by the Contractor. If the Construction Change Directive leaves open the determination of additional time or money related to the directed change, then the time period for commencement of filing the PRE shall not accrue until such time as the DFCM has conveyed

to the Contractor a position as to the time and money owing as a result of the directed change.

7.4 EVALUATION OF PROPOSAL FOR ISSUING CHANGE ORDERS.

7.4.1 ADJUSTING SUM BASED UPON AGREEMENT. If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on the mutual agreement of the Contractor and DFCM, including any terms mandated by unit price agreements or other terms of the Contract Documents.

7.4.2 DFCM RESOLUTION OF SUM AND STANDARDS IN THE ABSENCE OF AN AGREEMENT UNDER PARAGRAPH 7.4.1. In the absence of an agreement under Paragraph 7.4.1 above, the adjustment shall be based on an itemized accounting of costs and savings supported by appropriate data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph shall be limited to the following:

(1) All direct and indirect costs of labor; including workers compensation insurance, social security and other federal and state payroll based taxes, and payroll based fringe benefits paid by Contractor so long as they are reasonable and no higher than that charged to other clients;

(2) Costs of materials, on-site temporary facilities, supplies and equipment (except hand tools) required for or incorporated into the work;

(3) Rental costs of machinery, equipment, tools (except hand tools), and on-site temporary facilities, whether rented from the Contractor or others;

(4) Costs of permits and other fees, sales, use or similar taxes related to the Work;

(5) Additional costs of field supervision and field office personnel directly attributable to the change; and

(6) Overhead and profit by the following liquidated formula which is not a penalty but a reasonable calculation agreed upon at the time of execution of the Contractor's Agreement, and provided by formula herein due to the fact that the actual amount due for said overhead and profit cannot easily be ascertained at the time of such execution. The markups in 7.4.2(6)(a) and (b) below are to cover the Contractor's additional payment and performance bond premiums, insurance premiums not specified under Paragraph 7.4.2(1), home office and on-site overhead and profit. Overhead and profit includes, but is not limited to the Contractor's Project Manager and Cost Estimator. Each request for pricing shall stand on its own and not be combined with other requests for pricing in determining the allowed markup described below. A particular request for pricing shall include all items reasonably related together and determinable at the time of the request. If several unrelated requests for pricing are grouped together in a single Change Order, each request for pricing will be considered separately for purposes of calculating the markup under the following formula:

(a) A markup of 15% shall be applied to the cost of each individual charge up to \$20,000 in cost, but in no case shall the markup be less than \$150;

(b) A markup of 10% shall be applied to the portion of the cost of each individual charge in excess of \$20,000;

(c) Subcontractors at any tier shall be entitled to markup their costs related to a Change Order with the same percentages as specified in Paragraphs 7.4.2(6)(a) and (b) above, except that the minimum markup shall be \$50 for any individual change.

7.4.3 CREDITS. The amount of credit to be allowed by the Contractor to the DFCM for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed to DFCM based upon corroboration by an appropriate source.

7.5 CONSTRUCTION CHANGE DIRECTIVES.

7.5.1 WHEN USED AND CONTRACTOR'S RIGHT TO CHALLENGE. A Construction Change Directive may be issued by the DFCM Representative in the case of a need for the Work to commence. If the Construction Change Directive leaves open the determination of additional time or money related to the directed change, then the Construction Change Directive shall indicate the timeframe(s) in which further information is to be provided to resolve the matter. At any time that the DFCM and the Contractor agree upon the time and money related to a Construction Change Directive, a Change Order shall be executed by the parties. Additionally, the Construction Change Directive may be converted to a Change Order under Paragraph 7.2.2 or Article 7.3 above.

7.5.2 PROCEED WITH WORK AND NOTIFY DFCM ABOUT ADJUSTMENT METHOD. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved.

7.5.3 INTERIM PAYMENTS BY DFCM. Pending the final determination of the total cost of the Construction Change Directive, DFCM shall pay any undisputed amount to the Contractor.

7.6 A/E'S SUPPLEMENTAL INSTRUCTION (Commonly referred to as an "ASI"). The A/E may at any time that is consistent with maintaining the quality, safety, time, budget and function of the Work, issue to the Contractor a supplemental instruction ("ASI") after approval from the DFCM Representative is obtained. The Contractor must file with the DFCM Representative a PCO under Paragraph 7.2.2 above, within 21 calendar days of the Contractor's receipt of the ASI, or the Contractor shall be deemed to have waived any right to additional time or monies as a result of such ASI.

7.7 PROCEDURE FOR PRELIMINARY RESOLUTION EFFORTS.

7.7.1 REQUEST FOR PRELIMINARY RESOLUTION EFFORT (PRE). A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the DFCM. The labeling of the notice or request shall not preclude the consideration of the issue by the DFCM.

7.7.2 TIME FOR FILING. The PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

- (1) Issuance of a Construction Change Directive that defines the time and sum due the Contractor but the Contractor disagrees with such assessment;
- (2) Issuance of DFCM's position in regard to a Construction Change Directive that originally left open the time and/or sum due to the Contractor;
- (3) Issuance of a denial of a PCO by DFCM;
- (4) In the case of a Subcontractor, after the expiration of the time period for the Contractor/Subcontractor PRE process under Paragraph 7.7.5 below; or
- (5) When the Contractor knows or should have known about any other issue where the Contractor seeks additional monies, time or other relief from the State of Utah or DFCM.

7.7.3 CONTENT REQUIREMENT. The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

- (1) A description of the issue;
- (2) The potential impact on cost and time or other breach of contract; and
- (3) An indication of the relief sought.

7.7.4 SUPPLEMENTATION.

Additional detail of the content requirement under Paragraph 7.7.3 above shall be provided later if the detail is not yet available at the initial filing as follows:

(1) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and

(2) After the scope of work or other factors addressing the issue are completed, the complete information, including any impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

7.7.5 SUBCONTRACTORS.

(1) Under no circumstances shall any provision of these Contract Documents be intended or construed to create any contractual relationship between the DFCM and any Subcontractor.

(2) The Contractor must include the provisions of this Paragraph 7.7.5 in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(3) In order for a Subcontractor at any tier to be involved with the PRE of the DFCM, the following conditions and process shall apply:

(a) The Subcontractor must have attempted to resolve the issue with the Contractor including the submission of a PRE with the Contractor.

(b) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(c) The PRE to the Contractor must meet the time, content and supplementation requirements of Paragraphs 7.7.2, 7.7.3 and 7.7.4. The triggering event for a

Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(d) The PRE submitted to the Contractor shall only be eligible for consideration in the DFCM's PRE process to the extent the issue is reasonably related to the performance of the DFCM or an entity for which the DFCM is liable;

(e) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the DFCM. In order to be eligible for DFCM consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The DFCM shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor;

(f) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue;

(g) The DFCM shall not be obligated to consider any submission which is not in accordance with any provision of this Article 7.7;

(h) The Subcontractor may accompany the Contractor in participating with the DFCM regarding the PRE raised by the Subcontractor. The DFCM is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings; and

(i) Notwithstanding any provision of this Paragraph 7.7.5, a Subcontractor shall be entitled to pursue a payment bond claim.

7.7.6 PRE RESOLUTION PROCEDURE. The DFCM Representative may request additional information and may meet with the parties involved with the issue.

7.7.7 CONTRACTOR REQUIRED TO CONTINUE PERFORMANCE. Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the Contract and the DFCM shall continue to make payments in accordance with the Contract Documents.

7.7.8 DECISION. The DFCM shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the DFCM, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Paragraphs 7.7.3 and 7.7.4.

7.7.9 DECISION FINAL UNLESS CLAIM SUBMITTED. The decision by the DFCM shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with these General Conditions.

7.7.10 EXTENSION REQUIRES MUTUAL AGREEMENT. Any time period specified in this Article 7.7 may be extended by mutual agreement of the Contractor and the DFCM.

7.7.11 IF DECISION NOT ISSUED. If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

7.7.12 PAYMENT FOR PERFORMANCE.

(1) Except as otherwise provided in the Contract Documents, any final decision where the DFCM is to pay additional monies to the Contractor, shall not be delayed by any PRE, Claim or appeal by another party.

(2) Payment to the Contractor of any final decision shall be made by the DFCM in accordance with the contract for the completed work.

(3) Notwithstanding any other provision of the Contract Documents, payment to the Contractor shall be subject to any set-off, claims or counterclaims of the DFCM.

(4) Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

(5) Any payment or performance determined owing by the Contractor to the DFCM shall be made in accordance with the Contract Documents.

7.8. RESOLUTION OF CLAIM.

7.8.1 CLAIM. If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the DFCM, may submit a Claim in accordance with this Article 7.8 as a prerequisite for any further consideration by the DFCM or the right to any judicial review of the issue giving rise to the claim.

7.8.2 SUBCONTRACTORS. In order for a Subcontractor to have its issue considered in the Claim process by the DFCM, the Subcontractor that had its issue considered under Paragraph 7.7.5 may submit the issue as a Claim by filing it with the Contractor and the DFCM within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The DFCM shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of these General Conditions or the Contract Documents be intended or construed so as to create any contractual relationship between the DFCM and any Subcontractor.

(1) Upon such Claim being submitted, the Contractor shall fully cooperate

with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(2) The Director shall not be obligated to consider any submission which is not in accordance with this Paragraph 7.8.2.

(3) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(4) Notwithstanding any provision of this Article 7.8, a Subcontractor shall be entitled to pursue a payment bond claim.

7.8.3 TIME FOR FILING. The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one (21) days after the decision is issued on the PRE under Paragraph 7.7.8 or no more than twenty-one (21) days after the thirty (30) day period under Paragraph 7.7.11 has expired with a decision not issued, whichever is later.

7.8.4 CONTENT REQUIREMENT. The written Claim shall include:

(1) A description of the issues in dispute;

(2) The basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(3) A detailed cost estimate for any amount sought, including copies of any related invoices; and

(4) A specific identification of the relief sought.

7.8.5 EXTENSION OF TIME TO SUBMIT DOCUMENTATION. The time period for submitting documentation and any

analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

7.8.6 CONTRACTOR REQUIRED TO CONTINUE PERFORMANCE Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the DFCM shall continue to make payments in accordance with the Contract Documents.

7.8.7 AGREEMENT OF CLAIMANT ON METHOD AND PERSON(S) EVALUATING THE CLAIM. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purposes described in Rule R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

(1) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

(2) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

(3) An arbitration process which may be binding if agreed to by the parties to the Claim;

(4) A mediator; or

(5) Any other method that best accomplishes the purposes set forth in Rule R23-26-1.

7.8.8 THE EVALUATION PROCESS, TIMEFRAMES OF EVALUATOR(S), DIRECTOR'S DETERMINATION, ADMINISTRATIVE APPEAL TO THE EXECUTIVE DIRECTOR AND JUDICIAL REVIEW. The Claim shall be evaluated, the timeframe for specific events related to the person(s) evaluating the Claim, the Director's determination, any appeal to the Executive Director and any judicial review shall be subject to the provisions of Rule R23-26-5(8), R23-26-5(9), R23-26-6 and R23-26-8. A copy of these Administrative Rules are available at DFCM.

7.8.9 APPEAL PROCESS PREREQUISITE FOR FURTHER CONSIDERATION OR JUDICIAL REVIEW. The administrative appeal to the Executive Director is a prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the DFCM, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

7.9 PAYMENT OF CLAIM.

7.9.1 When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the payment provisions of the Contract Documents or judicial order.

7.9.2 When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the Contract Documents to the point that the work or services is completed

7.9.3 The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an

executed customary release document and waived its rights of appeal, or the expiration of the appeal period, with no appeal filed, or the determination made resulting from the final appeal.

7.9.4 Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the DFCM.

7.9.5 Notwithstanding any other provision of the Contract Documents, payment of all or part of a Claim is subject to any set-off, claims or counterclaims of the DFCM.

7.9.6 Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

7.9.7 The execution of a customary release document related to any payment may be required as a condition of making the payment.

7.10 ALLOCATION OF COSTS OF CLAIM RESOLUTION PROCESS.

7.10.1 In order to file a Claim, a claimant must pay a \$1500 filing fee to the DFCM. When the Claim is a pass-through from a Subcontractor in accordance with Paragraph 7.7.5, the payment of the fee shall be made by the Subcontractor.

7.10.2 Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

7.10.3 The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

7.10.4 Each party is responsible for its own attorney fees.

7.11 ALTERNATIVE PROCEDURES. To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this Article 7.

7.12 IMPACT ON FUTURE SELECTIONS.

7.12.1 The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the DFCM's selection process for a future award of contract; and

7.12.2 The submission of a bad faith and frivolous issue or Claim, or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the DFCM's evaluation of performance.

7.13 REPORT TO BUILDING BOARD. The DFCM may report on the claim to the Utah State Building Board.

7.14 DFCM'S RIGHT TO HAVE ISSUES, DISPUTES OR CLAIMS CONSIDERED. As stated in Rule R23-26-1(6), Articles 7.7 through 7.13 above do not limit the right of DFCM to have any of its issues, disputes or claims considered. DFCM reserves all rights to pursue its issues, disputes or claims in law or equity including, but not limited to, any or all of the following: damages, delay damages and impacts, losses, liability, patent or latent defects, or failure to perform under the Contract Documents. If the Director appoints an expert or a panel to consider any such issue(s), dispute(s) or claim(s) of DFCM, the Contractor shall cooperate with such expert or panel process.

ARTICLE 8. PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES With the first Application for Payment, the Contractor shall submit to the A/E and the DFCM Representative a schedule of values allocated to all the various portions of the Work. The Schedule of Values shall be submitted on the form approved and provided by DFCM. The A/E shall make recommendations to the DFCM Representative

regarding the Schedule of Values including any suggested modifications. When approved, including any approved modifications, by the DFCM Representative, it shall be the basis for future Contractor Applications for Payments. The Contractor shall not be entitled to payment until receipt and acceptance of the Schedule of Values.

8.2 APPLICATIONS FOR PAYMENT.

8.2.1 IN GENERAL. The following general requirements shall be met:

(1) The Contractor shall submit to the A/E an itemized Application for Payment for Work completed in accordance with the schedule of values and that reflects retainage as provided for in the Contractor's Agreement. The Application for Payment shall be on a special form approved and provided by DFCM.

(2) Such application shall be supported by such data substantiating the Contractor's right to payment as the DFCM or A/E may require. Said data may include, but is not limited to, copies of requisitions from Subcontractors.

(3) Such applications may include requests for payment pursuant to approved Change Orders or Construction Change Directives.

(4) Such applications may not include requests for payment for portions of the Work performed by a subcontractor when the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

(5) In executing the Application for Payment, the Contractor shall attest that subcontractors involved with prior applications for payment have been paid, unless the Contractor provides a detailed explanation why such payment may not have occurred. DFCM reserves the right to require the Contractor to submit a payment waiver from one or more subcontractors.

8.2.2 PAYMENT FOR MATERIAL AND EQUIPMENT. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment

delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the DFCM and A/E, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the DFCM to establish the DFCM's title to such materials and equipment or otherwise protect the DFCM's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The DFCM may require copies of invoices or other suitable documentation.

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

8.2.4 HOLDBACK BY DFCM. Notwithstanding anything to the contrary contained in the Contract Documents, the DFCM may, as a result of the claims resolution process, withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

8.3 CERTIFICATES FOR PAYMENT.

8.3.1 ISSUED BY A/E. The A/E shall within ten (10) days after receipt of the Contractor's Application for Payment, either issue to the DFCM a Certificate for Payment, with a copy to the Contractor, for such amount as the A/E determines due, or notify the Contractor and DFCM in writing of the A/E's reasons for withholding certification in whole or in part as

provided in Paragraph 8.4.1. If the A/E fails to act within said ten (10) day period, the Contractor may file the Application for Payment directly with the DFCM Representative and the DFCM will thereafter have twenty (20) days from the date of the DFCM's receipt to resolve the amount to be paid and to pay the undisputed amount. The accuracy of the Contractor's Applications for Payment shall be Contractor's responsibility, not A/E's.

8.3.2 A/E'S REPRESENTATIONS.

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

8.4 DECISIONS TO WITHHOLD CERTIFICATION.

8.4.1 WHEN WITHHELD. The A/E may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the DFCM, if in the A/E's judgment the representations to the DFCM required in

Paragraph 8.3.2 above can not be made. If the A/E is unable to certify payment in the amount of the Application, the A/E shall notify the Contractor and DFCM as provided in Paragraph 8.3.1 above. If the Contractor and A/E can not agree on a revised amount, the A/E shall promptly issue a Certificate for Payment for the amount to which the A/E makes such representations to the DFCM. The A/E may also decide not to certify payment or, because of subsequently discovered evidence or observations, may nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be necessary in the A/E's opinion to protect the DFCM from loss because of:

(1) Defective Work not remedied;

(2) Third party claims filed or reasonable evidence indicating probable filing of such claims;

(3) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

(4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(5) Damage to the DFCM or another contractor;

(6) Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

(7) Failure to carry out the Work in accordance with the Contract Documents.

8.4.2 CERTIFICATION ISSUED WHEN REASONS FOR WITHHOLDING REMOVED. When the reasons stated in Paragraph 8.4.1 for withholding certification are removed, certification will be made for such related amounts.

8.4.3 CONTINUE WORK EVEN IF CONTRACTOR DISPUTES A/E'S DETERMINATION. If the Contractor disputes

any determination by the A/E or the result of the claims resolution process with regard to any Certification of Payment, the Contractor nevertheless shall expeditiously continue to prosecute the Work.

8.4.4 DFCM NOT IN BREACH. The DFCM shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the DFCM's action or such withholding is consistent with the results of the dispute resolution process.

8.5 PROGRESS PAYMENTS.

8.5.1 IN GENERAL, INTEREST OR LATE PAYMENTS.

(1) Except as provided in Paragraph 8.3.1, the DFCM shall pay any undisputed amount within thirty (30) days of the date that the application for payment was submitted to the A/E. In no event shall DFCM be required to pay any disputed amount.

(2) Except as otherwise provided by law, if any payment is late based upon the provisions of the Contract Documents, the Contractor shall be paid interest in an amount equal to the published Wall Street Journal prime rate plus 2%. The published Wall Street Journal Prime Rate shall be determined using such rate that is published closest to the 1st of the month for each month of the late period. The amount of payment of interest shall be apportioned using such rate(s) for the late period.

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

8.5.3 INFORMATION FURNISHED BY A/E OR DFCM TO SUBCONTRACTOR.

The A/E or DFCM shall, on request, furnish to the Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the A/E and DFCM on account of portions of the Work done by such Subcontractor.

8.5.4 DFCM AND A/E NOT LIABLE.

Neither the DFCM or A/E shall have an obligation to pay, monitor or enforce the payment of money to a Subcontractor, except to the extent as may otherwise be required by law.

8.5.5 CERTIFICATE, PAYMENT OR USE NOT ACCEPTANCE OF IMPROPER WORK.

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

8.6 PAYMENT UPON SUBSTANTIAL COMPLETION.

Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the A/E, the DFCM shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. To the extent allowed by law, the DFCM may retain up to 200% of the fair market value of the work that has not been completed in accordance with the Contract Documents.

8.7 PARTIAL OCCUPANCY OR USE.

8.7.1 IN GENERAL. The DFCM may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the DFCM and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the

Work and commencement of the warranties required by the Contract Documents. When the Contractor considers a portion to be substantially complete, the Contractor shall prepare and submit a list to the A/E as previously provided for herein. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Contractor shall have continuing responsibility to protect the site and the Work during such partial occupancy and shall be responsible for damage except to the extent caused solely by the DFCM during such partial occupancy or use.

The stage of progress of the Work shall be determined by written agreement between the DFCM and Contractor.

8.7.2 INSPECTION. Immediately prior to such partial occupancy or use, the DFCM, Contractor and A/E shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

8.8 FINAL PAYMENT.

8.8.1 CERTIFICATE FOR PAYMENT. The A/E's final Certificate for Payment shall constitute a further representation that the conditions listed in Paragraph 8.8.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

8.8.2 CONDITIONS FOR FINAL PAYMENT. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the A/E the following to the extent required by the DFCM Representative:

(1) An affidavit that payrolls, bills for material and equipment, and other indebtedness connected with the Work for which the DFCM or the State of Utah's property might be responsible or encumbered (less amounts

withheld by DFCM) have been paid or otherwise satisfied;

(2) A current or additional certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice, by certified mail, return receipt requested, has been given to the DFCM;

(3) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

(4) If requested by surety in a timely manner or by DFCM, consent of surety, to final payment;

(5) Receipt of Record Drawings, Specifications, Addenda, Change Orders and other Modifications maintained at the site; the warranties, instructions, operation and maintenance manuals, and training videos required to be furnished by the Contract Documents;

(6) Other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the DFCM. If a Subcontractor refuses to furnish a release or waiver required by the DFCM, the DFCM may require consent of Surety to the final payment. If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, the Contractor shall refund to the DFCM all money that the DFCM may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees; and

(7) A written statement demonstrating how the Contractor will distribute interest earned on retention to Subcontractors as required by Section 13.8.5, U.C.A.

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

(1) Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

(2) Failure of the Work to comply with the requirements of the Contract Documents;

(3) Terms of warranties required by the Contract Documents; or

(4) The one-year guaranty period and any corrected Work.

8.8.4 DELAYS NOT CONTRACTOR'S FAULT. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the DFCM shall, upon application by the Contractor and certification by the A/E, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Unless otherwise stated by the DFCM in writing, the making of final payment shall constitute a waiver of claims by the DFCM as provided in Paragraph 8.8.3 for that portion of that Work fully completed and accepted by the DFCM.

8.8.5 WAIVER BY ACCEPTING FINAL PAYMENT. Acceptance of final payment by the Contractor or a Subcontractor shall constitute a waiver of Claims by that payee except those Claims previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Paragraph 8.8.3.

ARTICLE 9. TESTS AND INSPECTIONS, SUBSTANTIAL AND FINAL COMPLETION, UNCOVERING, CORRECTION OF WORK AND GUARANTY PERIOD.

9.1 TESTS AND INSPECTIONS.

9.1.1 IN GENERAL. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, resolutions or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise specifically set forth in the Contract Documents or agreed to by the DFCM in writing, the DFCM shall contract for such tests, inspections and approvals with an independent entity, or with the appropriate public authority, and the DFCM shall bear all related costs of tests, inspections and approvals except as provided below. If any of the Work is required to be inspected or approved by the terms of the Contract Documents or by any public authority, the Contractor shall, at least two working days prior to the time of the desired inspection, and following the procedures established by the DFCM, request such inspection or approval to be performed. The Contractor shall give the A/E timely notice of when and where tests and inspections are to be made so that the A/E may observe such procedures.

9.1.2 FAILURE OF AN INSPECTOR TO APPEAR. Work shall not proceed without any required inspection and the associated authorization by DFCM to proceed unless the following procedures and requirements have been met:

(1) The inspection or approval was requested in a timely manner as provided in Paragraph 9.1.1;

(2) The Contractor received written confirmation from the inspection entity that the inspection was scheduled;

(3) The Contractor has contacted or attempted to contact the inspector to confirm that the inspector is unable to perform the inspection as scheduled;

(4) If the inspector has confirmed that it is unable to perform the inspection as scheduled or if the Contractor is unable to contact the inspector, the contractor shall attempt to contact the State Building Official or DFCM Representative for instruction; and

(5) The Contractor has documented the condition of the work prior to being covered through photos or other means.

9.1.3 NONCONFORMING WORK. If such procedures for testing, inspection or approval under Paragraph 9.1.1 reveal failure of portions of the Work to comply with the requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the DFCM's expenses, including the cost of retesting for verification of compliance if necessary, until the DFCM accepts the Work in question as complying with the requirements of the Contract Documents.

9.1.4 CERTIFICATES. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the A/E.

9.1.5 A/E OBSERVING. If the A/E is to observe tests, inspections or approvals required by the Contract Documents, the A/E shall do so with reasonable promptness and, where practicable, at the normal place of testing.

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

9.2 INSPECTIONS: SUBSTANTIAL AND FINAL.

9.2.1 SUBSTANTIAL COMPLETION INSPECTION. Prior to requesting a substantial completion inspection, the Contractor shall prepare a comprehensive initial punchlist, including unresolved items from prior inspections, for review by the DFCM and A/E to determine if the Project is ready for a substantial completion inspection. If the DFCM determines that the initial punchlist indicates that the Project is not substantially complete, the initial punchlist will be returned to the Contractor with written comments. If the DFCM determines that the initial punchlist indicates that the Project may be substantially complete, the A/E shall promptly organize and

perform a Substantial Completion inspection in the presence of the DFCM and all appropriate authorities.

(1) If the A/E reasonably determines that the initial punchlist prepared by the Contractor substantially understates the amount of the Work remaining to be completed and the Project is not substantially complete, the A/E shall report this promptly to the DFCM, and upon concurrence of the DFCM, the Contractor will be assessed the costs of the inspection and punchlist preparation incurred by the A/E and the DFCM.

(2) When the Work or designated portion thereof is Substantially Complete, the A/E shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion; shall establish responsibilities of the DFCM and Contractor for security, maintenance, heat, utilities, damage to the work and insurance; and shall fix the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. The Certificate of Substantial Completion shall require approval by the DFCM Representative. If there is a punchlist, the Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on the punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

(3) Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof except to the extent as provided otherwise in the Contract Documents or if such warranty is related to an item where the work is not complete. Such warranty documents shall state the length of the warranty, which must comply with the Contract Documents.

(4) The Certificate of Substantial Completion shall be submitted by the A/E to the DFCM and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

(5) Except to the extent the DFCM Representative otherwise approves in

advance and in writing, the Contractor shall submit the following documents in order to achieve Substantial Completion: written warranties, guarantees, operation and maintenance manuals, and all complete as-built drawings. The Contractor must also provide or obtain any required approvals for occupancy. The Contractor is responsible for the guaranty of all Work, whether performed by it or by its Subcontractors at any tier.

9.2.2 FINAL COMPLETION

INSPECTION. Prior to requesting a final inspection, the Contractor shall verify all punchlist items are corrected/completed. Once all punchlist items are corrected/completed the Contractor shall notify the DFCM and request a final inspection. The DFCM shall notify the A/E and perform a final inspection. Two final inspections may be allowed due to required weather changes required to complete some items. When all punchlist items are completed a final pay request will be provided by the Contractor, authorized by the A/E and processed by the DFCM.

9.3 UNCOVERING OF WORK

9.3.1 UNCOVER UNINSPECTED WORK. Except as provided in Paragraph 9.3.3, if a portion of the Work is covered prior to an Inspector's approval to proceed, it must, be uncovered for the Inspector's inspection and be replaced at the Contractor's expense without change in the Contract Time.

9.3.2 OBSERVATION PRIOR TO COVERING. Except as provided in Paragraph 9.3.3, if the DFCM or the A/E has requested in writing to observe conditions prior to any Work being covered or if such observation is specified in the Contract Documents, and the Work is covered without such observation, the Contractor shall be required to uncover and appropriately replace the Work at the Contractor's expense without change in the Contract Time. If the Contractor requests an inspection and the DFCM or A/E, including any inspector of each, does not appear, the Contractor shall immediately notify the DFCM of such lack of appearance, but shall not cover the Work without such inspection.

9.3.3 WHEN AN INSPECTOR FAILS TO APPEAR OR A/E OR DFCM DID NOT MAKE PRIOR REQUEST. If Work is performed by the Contractor without an inspection as provided in Paragraph 9.1.2 or if a portion of the Work has been covered which the A/E or DFCM has not specifically requested to observe prior to its being covered or such observation is not specified by the Contract Documents, the A/E or DFCM may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement, shall, by appropriate Change Order, be charged to the DFCM. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the DFCM or a separate contractor in which event the DFCM shall be responsible for payment of such costs.

9.4 CORRECTION OF WORK AND GUARANTY PERIOD.

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

9.4.2 GUARANTY AND CORRECTION AFTER SUBSTANTIAL COMPLETION. If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.2.1 or by terms of an applicable special warranty or guaranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, including failure to perform for its intended purpose, the Contractor shall correct it promptly after receipt of written notice from the DFCM to do so unless the DFCM has previously given the Contractor a written acceptance of such condition. The period of one

year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation of the Contractor under this Paragraph 9.4.2 shall be operative notwithstanding the acceptance of the Work under the Contract, the final certificate of payment, partial or total occupancy and/or termination of the Contract. The DFCM shall give notice of observed defects with reasonable promptness, however, failure to give such notice shall not relieve the Contractor of its obligation to correct the Work at the cost that the Contractor would have incurred if the DFCM did so report with reasonable promptness. All corrected Work shall be subject to a one-year guaranty period the same in all respects as the original Work, except that such guaranty period shall commence from the time of Substantial Completion of the corrected Work. This guaranty period does not affect the DFCM's right to pursue any available remedies against Contractor.

9.4.3 REMOVAL OF WORK

(1) The Contractor shall promptly remove from the premises all Work that the DFCM and/or the A/E determines as being in nonconformance with the Contract Documents, whether incorporated or not.

(2) The Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the DFCM.

(3) The Contractor shall bear the expense of correcting destroyed or damaged construction, whether completed or partially completed, of the DFCM or of other contractors destroyed or damaged by such removal or replacement.

(4) If the Contractor does not remove such rejected Work within a reasonable time, fixed by written notice, the DFCM may have the materials removed and stored at the expense of the Contractor.

(5) If the Contractor does not correct the nonconforming Work within a

reasonable time, fixed by written notice, the DFCM may correct it in accordance with Paragraph 12.2.2 of these General Conditions.

9.4.4 NOT LIMIT OTHER OBLIGATIONS. Nothing contained in this Article 9.4 shall be construed to establish a period of limitation with respect to other obligations which the Contractor may have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 9.4.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

9.5 ADDITIONAL WARRANTIES.

9.5.1 IN GENERAL. In addition to any other provisions of this Article 9, the following warranties shall apply:

(1) The Contractor warrants to the DFCM that materials and equipment furnished under the Contract will be of good quality and new, except to the extent otherwise required or expressly permitted by the Contract Documents.

(2) The Contractor also warrants to the DFCM that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to said requirements, including substitutions not properly approved and authorized, may be considered defective at the DFCM's option.

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

9.5.3 FURNISH EVIDENCE ON REQUEST. If requested by the A/E or DFCM, the Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment.

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

ARTICLE 10. INSURANCE AND BONDS.

10.1 LIABILITY INSURANCE.

10.1.1 IN GENERAL. To protect against liability, loss and/or expense arising from damage to property or injury or death of any person or persons incurred in any way out of, in connection with or resulting from the Work provided hereunder, Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, the following insurance from insurance companies authorized to do business in the State of Utah in a form and content satisfactory to the DFCM and rated "A-" or better with a financial size category of (a) Class X or larger where the Contract Sum is \$1,000,000 or greater or (b) Class VII or larger where the Contract Sum is under \$1,000,000. Said rating and financial size category shall be as published by A.M. Best Company at the time the Contract is executed.

(1) Workers' Compensation Insurance and Employers' Liability Insurance. Worker's Compensation Insurance shall cover full liability under the Worker's Compensation Laws of the jurisdiction in which the Project is located at the statutory limits required by said jurisdiction's laws. Employer's Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee. The Contractor shall require all Subcontractors to take

and maintain similar policies of Workers' Compensation Insurance.

(2) Commercial General Liability Insurance.

a. Commercial General Liability Insurance, on an "occurrence basis," including insurance for operations, independent contractors, subcontractors at any tier, products/completed operations and contractual liability specifically designating the Indemnity provisions of these General Conditions as an insured contract on the Certificate of Insurance. Such Commercial General Liability Insurance must be endorsed with a Broad Form Property Damage Endorsement (including Completed Operations) and afford coverage for explosion, collapse and underground hazards. Such Commercial General Liability Insurance shall be in limits not less than the following:

\$2,000,000 General Aggregate, plus:

i. If the Construction Value is \$25,000,000 or more, an additional \$5,000,000 umbrella policy (which covers aggregate and per occurrence) is required; or

ii. if the Construction Value is \$10,000,000 or more but less than \$25,000,000, an additional \$2,000,000 umbrella policy (which covers aggregate and per occurrence) is required.

\$1,000,000 Products-Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Each Occurrence

b. For purposes of this subparagraph 2(a), Construction Value means:

i. the Contract Sum if the work is being performed under a Standard Construction Contractor's Agreement;

ii. the Fixed Limit of Construction Costs if the work is being performed under a Construction Manager/General Contractor Agreement; or

iii. the Guaranteed Fixed contract Amount if the work is to be performed under a Design/Build Agreement.

(3) Automobile liability insurance for claims arising from the ownership, maintenance, or use of a motor vehicle. The insurance shall cover all owned, non-owned, and hired automobiles used in connection with the Work, with the following minimum limits of liability:

\$1,000,000 Combined Single Limit Bodily Injury and Property Damage Per Occurrence

(4) Aircraft Use. Contractor using its own aircraft, or employing aircraft in connection with the Work performed under this Agreement shall maintain Aircraft Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah as Additional Insureds.

(5) Unless otherwise provided by the procurement documents, the insurance requirements in 10.1.1(1) through (4) above do not apply to subcontractors or suppliers at any tier under the Contractor and any insurance requirements of subcontractors and suppliers at any tier is a matter between the General Contractor and such subcontractor or supplier.

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

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

10.1.4 CERTIFICATE, NOTICE REQUIREMENTS, ADDITIONAL INSURED. Before the Contract Agreement is executed,

certificates evidencing coverages as specified above are in effect, shall be furnished to the DFCM. Such insurance certificates shall contain provisions that no cancellation, material change therein or non-renewal shall become effective except upon thirty (30) days prior written notice to the DFCM as evidenced by return receipt, certified mail sent to DFCM. The Contractor shall notify the DFCM within thirty (30) days of any claim(s) against the Contractor, and if such claim(s) exceed 20% of the applicable required insured limits, the DFCM may require the Contractor to re-instate the policy to provide full protection at the original limits. For any risk not covered by the Worker's Compensation Policy, the State of Utah shall be named as additional insured parties. All insurance policies provided shall be primary and non-contributing with, and not in excess of, any other insurance or self-insurance available to the State of Utah.

10.1.5 DEDUCTIBLE LIABILITY.

Any and all deductibles in the above described policies shall be assumed by, for the account of, and at sole risk of Contractor. The allowable deductible for any of the policies required by these General Conditions shall be no more than \$1,000 or 0.1 percent of the Contract Amount, whichever is greater. When there is an FLCC, the FLCC shall be the Contract Amount for purposes of calculating the allowable deductible.

10.1.6 ADDITIONAL REQUIREMENTS:

(1) Any type of insurance or any increase of limits of liability not described in this Agreement which the Contractor requires for its own protection or on account of any statute, rule or regulation, shall be its own responsibility and at its own expense.

(2) The carrying of any insurance required by this Agreement shall in no way be interpreted as relieving the Contractor or Subcontractors of any other responsibility or liability under this Agreement or any applicable law, statute, rule, regulation or order.

(3) Contractor shall not violate or knowingly permit to be violated any of the

provisions of the policies on insurance required under these General Conditions.

10.2 "BUILDER'S RISK" PROPERTY INSURANCE.

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

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

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

10.2.4 ADJUSTED WITH AND PAYABLE TO RISK MANAGER AS TRUSTEE. Any insured property loss is to be adjusted with the State of Utah Risk Manager, and made payable to the State of Utah Risk Manager as trustee for the Contractor and Subcontractors, as their interests may appear, subject to the requirements of any applicable loss payable clause.

10.2.5 WAIVER. Contractor, including all Subcontractors, and DFCM hereby waive all rights against each other for damages caused by

perils insured against under the "Builder's Risk" insurance provided by DFCM, except such rights as Contractor may have to the proceeds of such insurance held by the State of Utah's Risk Manager as trustee. The DFCM and the Contractor each shall require similar waivers from their contractors, subcontractors, subconsultants and agents, at any tier.

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

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

10.3.1 A full 100 percent performance bond covering the faithful execution of the Contract in accordance with the Contract Documents; and

10.3.2 A full 100 percent payment bond covering payment of all obligations arising under the Contract Documents, for the protection of each person supplying labor, service, equipment, or material for the performance of the Work.

10.3.3 Any required insurance required under the U.S. Terrorism Risk Insurance Act of

2002, any similar applicable law, or as such Act may be amended.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

11.1 A/E'S RESPONSIBILITIES.

These General Conditions are not intended to provide an exhaustive or complete list of the A/E's responsibilities. A separate agreement between the DFCM and A/E incorporates these General Conditions by reference and includes additional Design responsibilities.

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

11.3 WRITTEN NOTICE.

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

11.3.2 FAX. Notwithstanding any other provision of these General Conditions, written notice shall also be deemed to have been duly served by verified use of a FAX system by using the known and operative calling number. Service by use of the FAX system is encouraged when timely notice will benefit the—DFCM, A/E or Contractor. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the FAX system, if on the same day notice is also sent by registered or certified mail,

return receipt requested, to the last business address known to the party giving notice, confirming the FAX delivery.

11.4 RIGHTS AND REMEDIES.

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

11.4.2 NOT WAIVER. Except as expressly provided elsewhere in the Contract Documents, no action or failure to act by the DFCM, A/E or Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as any of the above may be specifically agreed to in writing. In no case shall the Contractor or any Subcontractors be entitled to rely upon any waiver of any of these General Conditions unless agreed to in writing by the DFCM.

11.5 COMMENCEMENT OF STATUTORY LIMITATION PERIOD.

11.5.1 BEFORE SUBSTANTIAL COMPLETION. Except as provided in 11.5.4 below, as to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

11.5.2 BETWEEN SUBSTANTIAL COMPLETION AND FINAL CERTIFICATION FOR PAYMENT.

Except as provided in Paragraph 11.5.4 below, as to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certification for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certification for Payment.

11.5.3 AFTER FINAL CERTIFICATION FOR PAYMENT.

Except as provided in Paragraph 11.5.4 below, as to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any guaranty provided under Article 9 the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 9.4.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or DFCM, whichever occurs last.

11.5.4 EXCEPTION. Notwithstanding any other provision of this Article 11.5 to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by the DFCM until after the date which, but for this Paragraph 11.5.4, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the DFCM.

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

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

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

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

11.10 SEVERABILITY. The invalidity of any part, paragraph, subparagraph, phase, provision or aspect of the Contract documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents.

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

11.12 NO THIRD PARTY RIGHTS. These General Conditions create rights and duties only as between DFCM and Contractor, and DFCM and A/E. Nothing contained herein shall be deemed as creating third party beneficiary contract rights or other actionable rights or duties as between Contractor and A/E, or as between DFCM, Contractor, or A/E on the one hand, and any other person or entity.

ARTICLE 12. TERMINATION OR SUSPENSION OF THE CONTRACT.

12.1 TERMINATION BY CONTRACTOR.

12.1.1 IN GENERAL. If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor, or their agents or employees or any other persons performing portions of the Work under contract with any of the above, the Contractor, may terminate the Contract in accordance with 12.1.2 hereinbelow for any of the following reasons:

(1) Because the DFCM has persistently failed to fulfill fundamental DFCM's obligations under the Contract Documents with respect to matters important to the progress of the Work;

(2) Issuance of an order of a court or other public authority having jurisdiction which necessitates such termination, except that where the Contractor has standing, the Contractor must cooperate in efforts to stay and/or appeal such order;

(3) An act of government, such as a declaration of national emergency, making material unavailable; or

(4) Unavoidable casualties or other similar causes as listed in Paragraph 12.2.2(2) hereinbelow.

12.1.2 NOTICE. If one of the reasons for termination in Paragraph 12.1.1 hereinabove exist, the Contractor may, upon ten (10) additional days' written notice to the DFCM and A/E, and such condition giving cause for termination still not cured, terminate the Contract and recover from the DFCM payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages associated only with work completed prior to the notice of termination.

12.2 TERMINATION BY THE DFCM FOR CAUSE.

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

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

(2) The Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

(3) The Contractor persistently disregards laws, ordinances, or rules, regulations, resolutions or orders of a public authority having jurisdiction; or

(4) The Contractor fails to perform the Work within the time specified in the Contract Documents or any authorized extension thereof or the Contractor fails to make progress with the Work as to endanger such compliance;

(5) The Contractor fails to perform the Work or is otherwise in breach of a material provision of the Contract Documents;

(6) The Contractor fails to respond promptly to the financial responsibility inquiry under the Contractor's Agreement;

(7) As permissible by law for a reason to terminate, the Contractor is adjudged bankrupt;

(8) As permissible by law for a reason to terminate, the Contractor should make a general assignment for the benefit to creditors;

(9) As permissible by law for a reason to terminate, the Contractor should have a receiver appointed on account of the Contractor's insolvency; or

(10) The Contractor fails to follow the material safety requirements and precautions either as expressly provided in the

Contract Documents or as consistent with the customary practices in the industry.

12.2.2 DFCM'S RIGHT TO CARRY OUT THE WORK.

(1) If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period (or longer if approved by the DFCM in writing) after receipt of written notice from the DFCM to cure such default or neglect, the DFCM may without prejudice to other remedies the DFCM may have, correct such deficiencies, including taking over the Work and prosecuting the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the Work, such materials, appliances, and facilities as may be on the site of the Work as well as the site as necessary for its proper completion. In such case, the DFCM shall offset from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E, DFCM's staff and legal counsel's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the DFCM. The Contractor shall continue performance of the Contract to the extent not terminated.

(2) Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor or anyone for whom the Contractor may be liable. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the State of Utah or federal government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor or anyone for whom the Contractor may be liable. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor

and the Subcontractor, and without the fault or negligence of either of them or anyone for whom either may be liable, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery or completion schedule.

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

(1) Any completed portion of the Work; and

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

12.2.4 PAYMENT. When the DFCM terminates the Contract for one or more of the reasons stated in Paragraph 12.2.1, the DFCM may withhold payment and/or pursue all available remedies.

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

12.2.6 CREDITS AND DEFICITS. If the unpaid balance of the Contract Sum exceeds the full cost of finishing the Work, including compensation for the A/E's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such cost exceeds the unpaid balance, the Contractor shall pay the difference to

the DFCM this obligation for payment shall survive the termination of the Contract.

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

12.2.8 RIGHTS AND REMEDIES NOT EXCLUSIVE. The rights and remedies of the DFCM provided in this Article 12.2 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

12.3 SUSPENSION, DELAY OR INTERRUPTION OF WORK BY THE DFCM FOR CONVENIENCE.

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

12.3.2 TIME PERIOD FOR CLAIMS. Any PRE by the Contractor for adjustment under this Article 12.3 must be asserted by the Contractor, in writing, within twenty-one (21) days from the date of termination of such suspension, delay or interruption; provided that the DFCM may, in its sole discretion, receive and act upon any such PRE asserted at any time prior to final payment under this Contract.

12.3.3 ADJUSTMENTS. Any adjustment in Contract Sum and Time shall be in accordance with Articles 3, 4, and 7.

12.4 TERMINATION FOR CONVENIENCE OF THE DFCM.

12.4.1 IN GENERAL

The performance of Work under this Contract may be terminated by the DFCM in accordance with this Article 12.4 in whole, or from time to time, in part, whenever the DFCM shall determine that such termination is in the best interest of the DFCM or any person for whom the DFCM is acting under this Contract. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

12.4.2 CONTRACTOR

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

(1) Stop work under the Contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to performance of Work terminated by the notice of termination;

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

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DFCM, which approval or ratification shall be final for all the purposes of this Article 12.4;

(6) Transfer title and deliver to the DFCM in the manner, at the times, and to the extent, if any, directed by the DFCM:

(a) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and

(b) The completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the DFCM;

(7) Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the DFCM, any property of the types referred to in Paragraph 12.4.2(6) above; provided, however, that the Contractor:

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

(b) May acquire any such property under the conditions prescribed by and at a price or prices approved by the DFCM; and provided further that the proceeds of any such transfer of or disposition shall be applied in reduction of any payments to be made by the DFCM to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the DFCM may direct;

(8) Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

(9) Take such action as may be necessary, or as the DFCM may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor in which the State has or may acquire an interest.

12.4.3 TERMINATION CLAIM.

After receipt of a notice of termination, the Contractor may submit to the DFCM a PRE, in the form and with certification prescribed by the DFCM. Such PRE shall be submitted promptly

but in no event not later than sixty (60) days from the effective date of termination.

12.4.4 AGREED UPON PAYMENT.

Subject to the provisions of Paragraph 12.4.3 above, the Contractor and the DFCM may agree upon the amount to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Article 12.4.

12.4.5 PAYMENT NOT AGREED UPON.

In the event of the failure of the Contractor and the DFCM to agree, as provided in Paragraph 12.4.4, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Article 12.4, the DFCM shall pay to the Contractor the amounts determined by the DFCM as follows, but without duplication of any amounts agreed upon in accordance with Paragraph 12.4.4:

(1) With respect to all Contract Work performed prior to effective date of the notice of termination, the total (without duplication of any items) of:

(a) The cost of such Work including undisputed Claim amounts;

(b) The cost of terminating, settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in Paragraph 12.4.2(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Subcontractors prior to the effective date of the notice of termination under this Contract, which amounts shall be included in the cost on account of which payment is made under Paragraph 12.4.5(1)(a) above;

(c) A sum, as overhead and profit on Paragraph 12.4.5(1)(a) above, determined by the DFCM to be fair and reasonable;

(d) The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph 12.4.2(9); and any other reasonable cost incidental to termination of Work under this Contract, including expenses incidental to the determination of the amount due

to the Contractor as the result of the termination of Work under this Contract.

(2) The total sum to be paid to the Contractor under Paragraph 12.4.5(1) above shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the DFCM shall have otherwise expressly assumed the risk of loss in writing, there shall be excluded from the amounts payable to the Contractor under Paragraph 12.4.5(1) above, the fair value of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the DFCM, or to a buyer pursuant to Paragraph 12.4.2(7).

12.4.6 DEDUCTIONS. In arriving at the amount due the Contractor under this Article 12.4, there shall be deducted:

(1) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;

(2) Any Claim which the State may have against the Contractor in connection with this Contract; and

(3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this Article 13.4, and not otherwise recovered by or credited to the DFCM.

12.4.7 PARTIAL TERMINATION. If the termination is partial, the Contractor may file with the DFCM a PRE for the amounts specified in the Contract relating to the continued portion of the Contract and such equitable adjustment as may be agreed upon shall be made in such amounts. Any PRE under this Paragraph 12.4.7 must be filed within twenty-one (21) days from the effective date of the notice of termination.

12.4.8 PARTIAL PAYMENTS. The DFCM may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs

incurred by the Contractor in connection with the terminated portion of this Contract whenever, in the opinion of the DFCM the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 12.4, such excess shall be payable by the Contractor to the DFCM upon demand, together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period until the date such excess is repaid to the DFCM; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the DFCM by reason of the circumstances.

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

12.5 DFCM'S RIGHT TO STOP THE WORK If the Contractor fails to correct Work or fails to carry out Work, as required by the Contract Documents or fails to comply with all required and customary safety precautions; the DFCM, by written order signed personally or by an agent specifically so empowered by the DFCM in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the DFCM to stop the Work shall not give rise to a duty on the part of the DFCM to exercise this right for the benefit of the Contractor or any other person or entity.

01019.1 DESCRIPTION

This Section covers measurement and payment practices utilized by the Engineer in performing its contract management services according to the requirements of these Specifications and other parts of the Contract Documents.

01019.2 MEASUREMENT**01019.2.1 METHODS**

The method of measurement and computations to be used in determination of quantities of material furnished, and of work performed under the Contract, will be those methods generally recognized as conforming to good engineering practice.

When items of improvement, equipment, or service referred to herein as "work" are shown on the plans and/or called for in the specifications for the Contractor to furnish, install, or provide, the items of work shall be measured and paid for in one of two ways. First, if the item of work is considered incidental to other items in the Bid Schedule, no separate measurement and payment shall be made and no separate bid item in the bid schedule will appear. In this case measurement and payment for this work shall be included by the Contractor in other bid items on the bid schedule. Second, when shown separately on the bid schedule, the item of work shall be measured as called for in the specifications and paid for at the contract unit price for that work.

01019.2.2 ACCURATE PRICING

The Bidder shall include a price for all bid items in the Bid Schedule and the Schedule of Values if required. Failure to do so may render the Bid non-responsive and may cause its rejection. All bids will be checked for errors. In the event the total "amount" indicated on the Bid schedule for a bid item does not equal the product of the unit price times the estimated quantity, the unit price shall govern, and the amount will be corrected accordingly. In the event the Bid Total does not agree with the sum of the prices bid on the individual bid items, the individual item prices shall govern and the total for the Bid schedule will be corrected accordingly. The Contractor shall be bound by any such corrections. For "Lump Sum" bid items, where applicable, the total shown on the Schedule of Values shall equal the amount entered for the corresponding bid item on the Bid schedule.

01019.2.3 U.S. STANDARD MEASURE

All work completed under this Contract will be measured by U.S. standard measure for the units described herein. Work performed by the Contractor will be measured in those units in accordance with the procedure described herein.

01019.2.4 MEASUREMENT BY ENGINEER

Since the quantities appearing on the Bid Schedules are approximate only and are prepared for the comparison of bids, all work and materials are subject to measurement by the Engineer. Measurement of work performed by the Contractor on Bid items with unit prices other than "lump sum" will be for the actual quantities of work performed and accepted, or material furnished in accordance with the Contract. In the case of lump sum bid items, the Engineer will verify that all of the work represented by the bid item has been completed.

01019.2.5 VARIATIONS IN QUANTITIES OF WORK

The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased, or omitted at the Owner's discretion.

01019.2.6 MEASUREMENT BY LUMP SUM

The term "Lump Sum" when used as a unit of measurement for a structure or separate component of a structure shall include all work necessary to complete that entire structure or component, including all necessary fittings and accessories delineated by the pay limits as shown on the Drawings. If no pay limits are shown on the Drawings, then the structure or component shall include all fittings and accessories within 5-feet of the item.

01019.2.7 MEASUREMENT BY LINEAL FOOT

All work measured by the lineal foot shall be measured parallel to the centerline. For water and gas piping, no deduction will be made for valve, fittings or carrier pipe. For sewer collection piping, measurement shall be to the inside surface of connecting manholes. Piping connected to structures, except headwalls, shall be measured to a point five (5) feet outside of that structure, unless indicated otherwise on the Drawings.

A station, when used as a unit of measurement, will be 100 lineal feet.

Items measured by the lineal foot; such as pipe culverts, guardrail, under-drains, etc., will be measured parallel to the base or foundations upon which structures are placed.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches.

01019.2.8 MEASUREMENT BY AREA

Area computations will be made from actual horizontal and transverse measurements made on the site of the work.

Structures will be measured to the neat lines shown on the plans or as altered to fit site conditions.

Lumber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thickness and the extreme length of each piece.

01019.2.9 MEASUREMENT BY VOLUME

In computing volumes of excavation, the average end area method will be used unless the Engineer and Contractor agree, in writing, to an alternate method.

Materials to be measured by volume or by load count shall be hauled in approved vehicles and measured at the point of delivery. Vehicles for this purpose may be of any size or type, provided the body is shaped so the actual volume may be readily and accurately determined.

When liquid bituminous materials are measured by the gallon or ton, volumes will be measured at 60° F, or will be corrected to the volume of 60 degrees F, using ASTM D 1250 for asphalt or ASTM D 633 for tars. When bituminous materials are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming, may be used for computing quantities.

01019.2.10 MEASUREMENT BY WEIGHT

The term "ton" will mean the short ton of 2,000 pounds avoirdupois.

When measurement units require weighing materials for payment, the Contractor shall be responsible for providing weight measurement from commercial certified scales or from scales provided at the job site which are certified in the state wherein the work is located.

Cement will be measured by the ton or hundredweight.

01019.2.11 CONVERSION OF WEIGHT TO VOLUME

When requested by the Contractor and approved by the Engineer in writing, materials specified to be measured by the cubic yard may first be weighed and the weight converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and agreed to by the Contractor before this method of measurement of quantities is used.

01019.2.12 SPECIFIC MANUFACTURED ITEMS

When standard manufactured items are specified; such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit, weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerance in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

01019.2.13 RENTAL EQUIPMENT

Rental of equipment will be measured in hours of actual working time and necessary traveling time of the equipment within the limits of the project. If equipment is ordered held on the project on a standby basis by the Engineer, the agreed rental rate, minus the labor and fuel costs, will be paid.

01019.2.14 MEASUREMENT BY EACH

All work measured by each shall be an individual or single unit.

01019.3 PAYMENT

01019.3.1 SCOPE OF PAYMENT

The Contractor shall receive and accept compensation provided in the Contract as full payment for:

- Furnishing all materials, labor, equipment, tools, transportation and incidentals required for completion of work.
- All loss or damage due to the nature of the work, action of the elements and unforeseen difficulties until final acceptance by the Engineer, subject to the provisions of the General Conditions.
- All costs arising from any infringement of a patent, trademark or copyright.
- Bids shall include all sales tax and all other applicable fees.

01019.3.2 NON-PAYMENT

No payment will be made for:

- Work which is in excess of that described in the Contract Documents

- Removal and replacement of defective work.
- Loss of anticipated profits.

01019.3.3 LUMP SUM

The term "lump sum", when used as a unit for payment, shall include all work required to complete the item, including all necessary fittings and accessories, as described in the Bid Schedule.

01019.3.4 FULL PAYMENT

The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage or expense of whatever character arising out of the nature of the work or the execution thereof.

01019.3.5 VARIATION IN QUANTITY OF WORK

When the final and accepted quantity of an item of work varies from the original quantity in the Bid Schedule but is within twenty-five (25) percent of that quantity, whether more or less, the Contractor shall accept payment at the unit price shown on the Bid Schedule for the actual quantity of work performed, which shall constitute payment in full for that item. If the variation in the quantity of an item of work shown on the Bid Schedule exceeds twenty-five (25) percent of the original quantity, whether more or less, an adjustment of unit price may be negotiated. Any adjustment resulting from such negotiation shall be authorized by Change Order in accordance with the General Conditions

The Owner reserves the right to make variations in quantities by adding to, or deleting from, quantities listed in the bid schedule in order to match the total bid with the money available in the budget.

01030.1 DESCRIPTION

This section covers project meetings including the pre-construction meeting and other progress and/or work coordination meetings conducted to provide communication and awareness to all parties associated with the Contract.

01030.2 PRE-CONSTRUCTION CONFERENCE

Prior to the commencement of work at the site, a pre-construction conference will be held at a mutually agreed time and place to be arranged by the Engineer. The Engineer shall also provide notification to all parties expected to attend the meeting. Attendees will include the following:

- Engineer
- Project Inspector
- Owner/Owner's Representative
- Contractor/Contractor's Representative/ Subcontractors as appropriate
- Governmental Representatives as appropriate (State, County, Municipal, etc.)
- Manufacturer/Supplier Representatives/Adjoining Contractors, as appropriate.
- Utility Service Representatives as appropriate.

01030.2.1 Unless previously submitted to the Engineer, the Contractor shall bring to the conference one copy each of the following:

- Contract construction schedule in accordance with the General Conditions
- Procurement schedule of major equipment and materials and items requiring long lead-time.
- Shop Drawings, samples or substitution proposals for items proposed as substitutions or "or equal" items.
- Schedule of work that includes the anticipated monthly payment amounts during the contract.
- A Schedule of Values of work to be paid for as lump sum items where partial payment is anticipated.

01030.2.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda may include but not be limited to the following items:

- Contractor's Work Schedule.
- Transmittal, review, distribution and approval of Contractor's submittals.
- Processing of applications for payment.
- Maintaining records and documents.
- Critical work sequencing.
- Field decisions and Change Orders.
- Use of project site, office and storage areas, security, housekeeping, and Owner's needs
- Major equipment deliveries and priorities
- Interpretation of Drawings and Specifications
- Contractor's responsibilities for safety, first-aid and sanitation.

01030.2.3 The Engineer will preside at the pre-construction conference and will arrange for keeping minutes and distributing them to all attendees to the meeting.

01030.3 PROGRESS/COORDINATION MEETINGS

01030.3.1 The Contractor shall conduct regular on-site progress and coordination meetings at least weekly and at other times as requested by Engineer or as required by progress of the work. The

Contractor, Engineer, and all Subcontractors active on the site shall be represented at each meeting. The Contractor may, at its discretion, request attendance by representatives of its suppliers, manufacturers, and other Subcontractors. The Contractor shall be responsible for providing written notification to those deemed necessary for attendance at least 36 hours prior to the time set for the meeting.

- 01030.3.2 The Contractor shall preside at the meetings and maintain a file of minutes of the proceedings. The purpose of the meetings will be to review the progress of the work, maintain coordination of effort, discuss changes in scheduling, and resolve other problems which may develop.

01090.1 DESCRIPTION

Wherever in these Specifications references are made to the standards, specifications, or other published data of the various national, regional, or local organizations, such organizations may be referred to by their acronyms or abbreviations only. As a guide to the user of these Specifications, the following acronyms or abbreviations, which may appear herein, shall have the meanings indicated below.

01090.1.1 DEFINITIONS OF ABBREVIATIONS AND ACRONYMS

| | |
|--------|--|
| AAR | Association of American Railroads |
| AASHTO | American Association of the State Highway and Transportation Officials |
| ACI | American Concrete Institute |
| AGA | American Gas Association |
| AGC | Associated General Contractors |
| AGMA | American Gear Manufacturers Association |
| AI | The Asphalt Institute |
| AIA | American Institute of Architects |
| AISC | American Institute of Steel Construction |
| AISI | American Iron and Steel Institute |
| ANSI | American National Standards Institute, Inc. |
| APWA | American Public Works Association |
| ASCE | American Society of Civil Engineers |
| ASHRAE | American Society of Heating, Refrigerating, and Air-Conditioning Engineers |
| ASME | American Society of Mechanical Engineers |
| ASQC | American Society of Quality Control |
| ASSE | American Society of Sanitary Engineers |
| ASTM | American Society for Testing and Materials |
| AWS | American Welding Society |
| AWWA | American Water Works Association |
| BLM | Bureau of Land Management (U.S. Department of Interior) |
| CEMA | Conveyor Equipment Manufacturer's Association |
| CGA | Compressed Gas Association |
| CFR | Code of Federal Regulations |
| CLFMI | Chain Link Fence Manufacturer's Institute |
| CMA | Concrete Masonry Association |
| DIP | Ductile Iron Pipe |
| EIA | Electronic Industries Association |
| EPA | U. S. Environmental Protection Agency |
| ETL | Electrical Test Laboratories |
| FEMA | Federal Emergency Management Administration |
| FERC | Federal Energy Regulatory Commission |
| FS | Forest Service (U.S. Department of Agriculture) |
| FWS | Fish and Wildlife Service |
| GI | Galvanized Iron |
| ICBO | International Conference of Building Officials |
| ID | Inside Diameter |
| IEEE | Institute of Electrical and Electronics Engineers |
| IES | Illuminating Engineering Society |
| IME | Institute of Makers of Explosives |
| ISA | Instrument Society of America |
| ISO | International Organization for Standardization |
| MBMA | Metal Building Manufacturer's Association |
| NACE | National Association of Corrosion Engineers |
| NBS | National Bureau of Standards |

| | |
|--------|---|
| NEC | National Electrical Code |
| NEMA | National Electrical Manufacturer's Association |
| NFPA | National Fire Protection Association |
| NFPA | National Forest Products Association |
| NRCS | Natural Resources Conservation Service (U S Department of Agriculture) (formerly SCS) |
| OD | Outside Diameter |
| OSHA | Occupational Safety and Health Administration |
| PCA | Portland Cement Association |
| PE | Polyethylene |
| PVC | Polyvinyl Chloride |
| RWMA | Resistance Welder Manufacturer's Association |
| SAE | Society of Automotive Engineers |
| SSPWC | Standard Specification for Public Works Construction |
| UBC | Uniform Building Code |
| UL | Underwriters Laboratories, Inc. |
| UPRR | Union Pacific Railroad |
| USDARD | Rural Development (U S Department of Agriculture) (formerly Farmers Home Administration) |
| WCRSI | Western Concrete Reinforcing Steel Institute |
| WRI | Wire Reinforcement Institute, Inc. |
| WWPA | Western Wood Products Association |

01090.2 REFERENCED WORKS, CODES AND STANDARDS

Whenever references to specifications, codes, standards and other publications are made to these Specifications, the following rules shall apply:

01090 2.1 TITLES OF SECTIONS AND PARAGRAPHS

Titles of sections and/or paragraphs shown in these Specifications are for convenience of reference only, and do not form a part of the Specification.

01090 2.2 APPLICABLE PUBLICATIONS

Whenever references in these specifications are made to published specifications, codes, standards, or other requirements, it shall be understood that unless a date is specified, only the latest edition of these specifications, codes, and/or standards which have been published as of the date that the work is advertised for bids, shall apply; except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances, or governing codes. No requirements set forth herein or shown on the Drawings shall be waived because of any provision of, or omission from, said standards or requirements

01090.2.3 SPECIALISTS AND SPECIAL ASSIGNMENTS

In certain instances, specification text requires (or implies) that specific work is to be assigned to specialists or expert entities, who must be engaged for the performance of that work. Such direction shall be recognized as special requirements and is not intended to interfere with local union jurisdiction settlements and similar conventions. Such assignments are intended to establish which party or entity involved in a specific unit of work is recognized as "expert" and qualified for the assignment of the work. Nevertheless, the final responsibility for fulfilling this assignment remains with the Contractor

01090 2.4 BUILDING CODES

Reference herein to "Building Code" shall mean the Uniform Building Code issued by the International Conference of Building Officials (ICBO). The latest edition of the code as approved and used by the local agency as of the date of award, as adopted by the agency having jurisdiction, shall apply to the work herein, including all addenda, modifications, amendments, or other lawful changes thereto.

01090.2.5 OSHA

01090.2.5.1 OSHA REGULATIONS - References herein to "OSHA Regulations for Construction" shall mean Title 29, Part 1926, Construction Safety and Health Regulations, Code of Federal Regulations (OSHA), including all changes and amendments thereto.

01090.2.5.2 OSHA STANDARDS - References herein to "OSHA Standards" shall mean Title 29, Part 1910, Occupational Safety and Health Standards of the U.S. Code of Federal Regulations, including all changes and amendments thereto.

01090.2.6 DOT STANDARDS/SPECIFICATIONS

References to "State DOT Specifications" or "State DOT Requirements" shall mean the Specifications for Excavation on State Highway Right-of-Way and/or Standard Specifications for Road and Bridge Construction, including all amendments thereto, issued by the State agency responsible for highways wherein the Contract is located and any other written requirements or provisions issued by that agency which are contained in these Contract Documents.

01090.2.7 FEDERAL PIPELINE SAFETY STANDARDS

Reference to "Federal Pipeline Safety Standards" shall mean Title 29, Parts 191 and 192, Federal Pipeline Safety Minimum Standards, U.S. Code of Federal Regulations including all changes and amendments thereto.

01090.2.8 STATE GAS PIPELINE SAFETY STANDARDS

References to "State Gas Pipeline Safety Standards" shall mean the appropriate section/s of the legal code or regulations adopted in the State wherein the work is located, including all changes and amendments thereto.

01090.3 STANDARDS IMPOSED BY OTHER AGENCIES OR ORGANIZATIONS**01090.3.1 PROPERTY BELONGING TO OTHER AGENCIES OR ORGANIZATIONS**

Construction may occur on property owned or administered by agencies or organizations other than the Owner, such as federal and/or state departments of transportation, the U. S. Forest Service, the U S Bureau of Land Management, the U.S. Fish and Wildlife, counties, canal companies, irrigation companies, utility companies, other federal and state agencies, municipal governments, etc. Work which is to take place on such property may be required to be in accordance with special construction requirements of that agency or organization as well as these specifications.

01090.3.2 ADDITIONAL INFORMATION AND SPECIFICATIONS

Information will be provided on the plans to indicate areas of the Work which fall on property owned or administered by agencies and organizations other than the Owner. Specifications from agencies which are affected by the work will be provided in the Appendix to the Contract Documents. Those specifications provided in the Appendix shall be considered part of the Contract Documents and the Contractor shall include sufficient compensation in its bid to cover the work required for compliance thereto

01090.4**CONFLICTS**

In case of conflict between codes, reference standards, Drawings and the other Contract Document, the most stringent requirements shall govern. All conflicts shall be brought to the attention of the Engineer for clarification and directions prior to ordering or providing any materials or labor required therefrom. The Contractor shall assume the most stringent requirements apply when preparing bids for this Contract

01200.1 DESCRIPTION

The purpose of this section is to clarify certain aspects of the Project and the Contract that must be taken into consideration and completed before final acceptance of the Work can be given. These items include cleanup, demonstration of acceptable performance of equipment and facilities furnished and installed, submittals, payment for all work completed, issuance of final acceptance documentation, accepted repair and restoration of work and materials found defective during the warranty period. Specific instructions are provided herein for completion of the Work in such a manner that it will be fully acceptable and that the Contractor will be eligible for receipt of final payment.

01200.1.1 RELATED WORK AND REFERENCED SECTIONS

Not used.

01200.1.2 SUBMITTALS

Section 01300 - Submittals
See paragraph 01200.3.5 below.

01200.1.3 DEFINITIONS

Not used.

01200.2 MATERIALS

Not used.

01200.3 CONSTRUCTION REQUIREMENTS**01200.3.1 CLEANUP**

The Owner will not give final acceptance of the Work until the Contractor has satisfactorily complied with the finishing and cleanup requirements contained in these Contract Documents and with any applicable local regulations. The Contractor shall accomplish the cleanup operations so as to leave the work site in an orderly, acceptable, and presentable condition.

01200.3.2 REPAIR AND RESTORATION

All major and minor damage to improvements and finished surfaces resulting from the Contractor's performance of the Work, whether to materials and equipment located on the project site or to those constructed under this Contract, shall be repaired to an original, or like-new, condition before final acceptance will be provided by the Engineer and Owner. Where damage to surfaces or materials can not be sufficiently repaired or restored, in the opinion of the Engineer, the Contractor may be required to replace the entire surface covering or structural member to achieve an original or like-new condition of the surface or material.

01200.3.3 TESTING

All performance and operational testing of facilities and equipment required by the Contract Documents, together with any required supportive documentation, shall be completed by the Contractor and approved by the Engineer prior to final acceptance of the Work.

01200.3.4 ACCEPTANCE FROM PROPERTY OWNER

The Contractor shall obtain a written release from each property owner on whose property work has been required by these Contract Documents. Such release shall indicate the property Owner's approval of the restoration and/or replacement of all disturbed improvements, surfaces and structures. Any request made to the Contractor by a private property owner, and determined to be unreasonable in the opinion of the Engineer, may be waived by the Owner

01200.3.5 SUBMITTAL OF MANUFACTURER'S DOCUMENTATION

All guarantees and warranties, operation and maintenance manuals or brochures, or other materials furnished to the Contractor by the manufacturer for any equipment or material used for the Work shall be delivered to the Owner in protective 3-ring binders. Retainage held to the Contractor in accordance with the General Conditions of the Contract Documents will not be released until such documentation is submitted. See Section 01300 for more detail regarding O&M manuals.

01200.3.6 FINAL ACCEPTANCE

01200.3.6.1 CONTRACTOR'S STATEMENT OF COMPLETION - When the Contractor has completed the Work under this contract, including all of the Contractor's testing and clean-up, the Contractor shall inform the Engineer in writing that the Work has been completed and request a final inspection by the Engineer. The Engineer will then conduct a final inspection with the Owner and representatives of the pertinent funding and regulatory agencies. If items are found by the Engineer to be incomplete or not in compliance with the contract requirements, the Engineer will inform the Contractor of such items. After the Contractor has completed these items, the procedure shall then be the same as described above for the Contractor's statement of completion and request a final inspection.

01200.3.6.2 NOTICE OF FINAL ACCEPTANCE - After the Engineer has determined that all work required under the Contract Documents has been completed and that all of the considerations specified herein above are satisfactorily concluded, the Engineer will recommend to the Owner, in writing, that final acceptance of the entire Work under this contract be made as of the date of the Engineer's final inspection. The Owner and Engineer will then indicate formal approval and acceptance of the Work by issuing the "Notice of Final Acceptance" form.

01200.3.6.3 NO PARTIAL ACCEPTANCE - Unless otherwise required by Special Provisions, partial acceptance of any portion of the Work will not be made. While Substantial Completion notice can be issued in accordance with the General Conditions to allow use of completed work for its intended purpose, no acceptance other than the final acceptance of all completed work will be made. No inspection or approval or Notice of Substantial Completion pertaining to specific parts of the work shall be construed as final acceptance of any part until written final acceptance of all work is issued.

01200.4 METHOD OF MEASUREMENT

Not used.

01200.5 BASIS OF PAYMENT

Not used

01300.1 DESCRIPTION

This section covers procedures to be followed by the Contractor when providing information to the Owner and/or Engineer to obtain approval of materials, equipment, procedures, etc. described in the Specifications and Drawings.

01300.2 SHOP DRAWINGS AND MATERIALS SUBMITTALS**01300 2 1 NUMBER OF COPIES OF SUBMITTALS**

The Contractor shall furnish six (6) copies of each shop drawing and pertinent materials information sheet to the Engineer for review. Following review and approval, two copies shall be returned to the Contractor for his records, two shall be retained by the Engineer for inspection and verification purposes, and two shall go to the Owner as working and archival records.

01300.2.2 SHOP DRAWINGS

01300 2 2 1 CONTRACTOR REVIEW - The Contractor's shop drawing submittals shall be reviewed by a qualified representative of the Contractor, prior to submission to the Engineer. Such review shall be made to ensure the accuracy and compliance with the technical requirements and performance described and illustrated in the Drawings and Specifications.

01300 2 2 2 CONTENT - Shop drawings shall include drawings, pictures and sketches with sufficient details and explanations to reflect the Contractor's interpretations of components and required configurations not shown on the drawings, so that a documented record of such can be approved for incorporation in the Work. These drawings shall be accurate, distinct, and complete and shall contain all required information, including satisfactory identification of items and unit assemblies in relation to the Drawings and/or Specifications.

01300 2 2 3 TIMELY SUBMITTAL - Shop drawings shall be submitted sufficiently in advance to allow the Engineer not less than ten regular working days for examining the drawings.

01300 2 2 4 ENGINEER APPROVAL - When the shop drawings are approved by the Engineer, two sets of copies will be returned to the Contractor marked "Approved", "Revise as Noted", "Rejected", "Approved Except as Noted", or similar notification. If changes or corrections are necessary, one set will be returned to the Contractor with such changes or corrections indicated by a brief statement, and the Contractor shall correct and resubmit the drawings, in triplicate, to the Engineer.

Fabrication work shall not commence until the Engineer has reviewed the pertinent shop drawing/s and returned copies to the Contractor marked either "Approved" or "Approved - Except as Noted". Corrections indicated on such submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work.

Approval of shop drawings will not be required for reinforcing steel that is detailed by the Contractor in accordance with the Plans and Specifications. Any change from the Plans and Specifications made by the Contractor in any aspect of the Work shall be approved by the Engineer in a written Change Order prior to any work being altered from that already approved for construction.

001300 2 3 MATERIALS INFORMATION SUBMITTALS

In keeping with 01300 2.1 above, the Contractor shall assemble and submit six (6) original copies of each manufacturer's catalog cuts and materials information sheets pertaining to materials and

equipment to be furnished and installed in the Work. Photocopies of the catalog cuts and information sheets will not be acceptable as submittals without prior authorization from Engineer.

01300.2.4 CONTRACTOR LIABILITY

The Contractor shall assume all responsibility and risk for any re-work or other costs resulting from errors in Contractor submittals. The Contractor shall be responsible for showing accurate dimensions and details of connections required to ensure the function of the equipment and/or component of the Work being illustrated.

01300.3 SAMPLES

01300.3.1 NUMBER OF SUBMITTALS

Whenever requested by the Engineer, the Contractor shall submit at least one sample of each item or material indicated in the Specifications to the Engineer for inspection and acceptance and do so at no additional cost to the owner.

01300.3.2 TIMELY AND ORDERLY SUBMITTAL

Samples shall be submitted sufficiently in advance of placement of orders that the Engineer shall have not less than ten regular working days for examining and testing the material for acceptance prior to delivery to the job site. Samples shall be submitted in an orderly sequence and appropriately identified so that dependent materials or equipment can be assembled and reviewed without causing delays in the work or mistakes in their identity.

01300.3.3 SELECTION OF COLORS AND TEXTURES

Unless otherwise specified, the Owner and the Engineer will select all colors and textures of specified items from the manufacturer's standard colors and standard materials, products, or equipment lines.

01300.4 OPERATIONS AND MAINTENANCE MANUALS

01300.4.1 STRUCTURE OF OPERATIONS AND MAINTENANCE MANUALS

The Contractor shall furnish to the owner four (4) identical sets of Operations and Maintenance manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard size, 3-ring, loose-leaf, vinyl plastic, hard cover binder suitable for bookshelf storage. Binder ring size shall not exceed 2.5 inches. A table of contents shall be provided which indicates all equipment in the Operations and Maintenance manuals.

01300.4.2 CONTENTS

The Contractor shall include in the Operations and Maintenance Manuals the following information for each item of mechanical, electrical, and instrumentation equipment:

- Care and maintenance of all finished exposed surfaces.
- Complete operating instructions, including location of controls, special tools or other equipment required, related instrumentation, and other equipment needed for operation.
- Preventive maintenance procedures and schedules.

- Complete parts lists, by generic title, identification number, and catalog number, complete, with exploded views of each assembly.
- Disassembly and reassembly instructions
- Name and location of nearest supplier and spare parts warehouse.
- Name and location of manufacturer
- Recommended start-up, testing and troubleshooting procedures.
- Prints of the record drawings, including diagrams and schematics, as required under the electrical and instrumentation portions of these specifications.

01300.4.3 SCHEDULE OF DELIVERY

Operations and Maintenance manuals shall be submitted in final form to the owner before seventy-five (75) percent of the Work is completed. Any discrepancies found by the owner and Engineer in the Operations and Maintenance manuals shall be corrected by the Contractor prior to final acceptance of the project.

01300.5 SCHEDULE OF VALUES

At the time of the pre-construction conference, the Contractor shall submit a Schedule of Values of the Work measured as lump sum bid items. On the Schedule, those items shall be subdivided into component parts in sufficient detail as to form a basis for determining progress payments during construction. Quantities, and/or prices, shown on the Schedule shall equal the total contract price for each lump sum item. Information provided on the Schedule will be reviewed and approved by the Engineer when found acceptable. That information will then be incorporated into the data used for preparing the Application for Payment by the Engineer.

01300.6 CONTRACT CONSTRUCTION SCHEDULE

A construction schedule, prepared in accordance with requirements of the General Conditions, shall be submitted to the Engineer at the pre-construction conference. Unless required otherwise in Special Provisions, such schedule shall show the anticipated time of completion, approximate start dates of identifiable segments of the Work, and anticipated value of the work expected to be completed in monthly time periods within the contract period.

01300.7 PROCUREMENT SCHEDULE

At the time of the pre-construction meeting (see Section 01030), the Contractor shall submit a procurement schedule to the Engineer. This plan shall include all equipment and materials required for the Work included in the Contract that are not readily available and will require off-site manufacture and lead time which can effect the progress of the Work. The plan shall show at least the following information:

- Equipment/Material Name
- Anticipated amount of time for ordering, manufacturing, and shipping to Work site.
- Anticipated dates for ordering, receiving and installing.

01300.8 CONSTRUCTION PHOTOGRAPHY RECORDS

When required in the Contract Documents and prior to commencement of any of the Work, the Contractor shall prepare colored video photography records of all areas of the Contract work site and provide copies of such records to the Engineer. Such records shall become the property of the owner and may be used for determining the condition of work site/s and degree of restoration required for completion of the Work (see also Section 2000).

01400.1 DESCRIPTION

This section covers quality control of all work and activities on the part of the Owner, the Engineer, and the Contractor, to ensure compliance with these Specifications and the requirements of the Contract.

01400.2 ASSIGNMENT OF RESPONSIBILITY**01400.2.1 THE CONTRACTOR**

The Contractor has primary responsibility for ensurance of quality control of the Work provided under the Contract. Therefore, any omission or failure on the part of the Engineer to notify the Contractor of, or to condemn defective work and/or materials at the time of construction shall not be taken as acceptance of the work or materials, and the Contractor will be required to correct any defective work or materials prior to final acceptance.

01400.2.2 THE OWNER AND ENGINEER

The Engineer will endeavor to locate any errors or defective materials or workmanship, and call them to the attention of the Contractor prior to subsequent work being performed. However, the Engineer is under no obligation to do so, and neither the Owner, nor the Engineer shall be held liable for errors, or defective material, or defective workmanship performed by the Contractor and not discovered by the Engineer prior to subsequent work being performed.

01400.2.3 CORRECTIONS

Prior to execution of the Agreement, the Engineer may correct errors and omissions to these Contract Documents by issuing Addenda. After execution of the Agreement, correction of errors, omissions or other changes necessitated shall be made in accordance with the General Conditions (Section 00700).

01400.3 QUALITY OF MATERIALS**01400.3.1 COMPLIANCE WITH SPECIFICATIONS**

All materials and equipment incorporated in the Work shall be of new manufacture and shall be of the grade and quality described by these Specifications and the Special Provisions.

01400.3.2 SPECIFIED MATERIALS

Where a specific brand or manufacturer's equipment, model, system, or etc is specified in these Specifications, no intention is made to be exclusive or limit competition, but rather to set forth the minimum standards for quality and performance.

01400.3.3 SUBSTITUTION OF MATERIALS

The Engineer, in accordance with the General Conditions (Section 00700.8), may allow substitution of equipment or materials. The Owner reserves the right to reject substitutions if, in his opinion, the proposed substitutions will not achieve comparable equipment installation and performance standards.

01400.4 QUALITY OF WORK

All workmanship incorporated in the Work covered by the Contract is to be of the grade and quality described by these Specifications and the Special Provisions

01400.5 INSPECTION

01400 5 1 AUTHORITY AND DUTIES OF INSPECTOR

01400 5 1.1 AUTHORITY - Inspectors representing the Engineer are authorized to inspect all work performed and all materials furnished and to reject defective material and any work that is improperly performed, subject to the final decision of the Engineer. This authority extends to all or any part of the Work, including the preparation, fabrication, or manufacture of any materials or equipment to be used for completion of the Work. The Inspector is not authorized to alter or waive the provisions of these Specifications or other provisions of the Contract Documents. The Engineer may delegate additional authority to the Inspector when such action is determined to be necessary.

01400 5 1.2 DUTIES - Inspectors keep the Engineer informed as to the progress of the Work and the manner in which it is performed. Inspectors are also assigned to call the Contractor's attention to any observed nonconformance with the Contract Documents. The Inspector will not act as foreman for the Contractor.

01400 5 2 INSPECTION OF MATERIALS

01400 5 2.1 TESTING - In accordance with the Contract Documents and at the option of the Engineer, materials to be supplied under this contract will be tested and/or inspected either at their place of origin or at the site of the Work. The Contractor shall give the Engineer written notification well in advance of actual readiness of materials to be tested and/or inspected at the point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude re-testing or re-inspection at the site of the Work.

01400 5 2.2 SAMPLES - The Contractor shall furnish such samples of materials as are requested by the Engineer, without charge. No material shall be incorporated into the Work until the Engineer has approved it (see Section 01300).

01400 5 3 CONTRACTOR LIABILITY

The inspection of the Work shall not relieve the Contractor of any of its obligations to fulfill its contract as herein provided, and unsuitable materials may be rejected notwithstanding that such unsatisfactory performance may have been overlooked and accepted or estimated for payment.

01500.1 DESCRIPTION

Covers requirements for aptness, competency, quality, and quantity in the labor, equipment, tools, and materials supplied by the Contractor for prosecution of the Work.

01500.2 REQUIREMENTS

In order to bring the Work to completion in the manner and on the time schedule required by the Contract Documents, the Contractor shall provide sufficient labor and equipment with adequate training and capability as follows:

- The Contractor shall employ sufficient labor and equipment with adequate training and capability for prosecuting the Work to full completion in the manner and time required by these Specifications.
- All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have appropriate training and sufficient experience in such work, in the opinion of the Engineer, to perform all work properly and satisfactorily.
- Any person employed by the Contractor or by any Subcontractor who, in the opinion of the Engineer, does not perform their work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or Subcontractor employing such person. Such person/s shall not be employed again in any portion of the Work without the approval of the Engineer. When such action is considered, and if requested by that employee, a hearing attended by the employee, Engineer, and Contractor shall be conducted before final dismissal action is taken.
- Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such order is complied with.
- All equipment, which is proposed to be used on the Work, shall be of sufficient size and in such mechanical condition, in the opinion of the Engineer, as to produce a satisfactory quality of Work. Equipment used on any portion of the Work shall be fitted with appropriate protective devices in accordance with OSHA and other applicable safety regulations such that no injury to employees, the Work, or to adjacent property will result from its use.
- When the specific methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the Contract Documents, the Contractor is free to use any methods or equipment that will accomplish the Work in conformity with the requirements of this Contract

01510.1 DESCRIPTION

This section covers measures and instructions for prevention of damage to existing structures and utilities, whether above ground or underground, during execution of the Work of the Contract.

01510.2 PROTECTION OF EXISTING UTILITIES**01510.2.1 INTEGRITY OF UTILITIES**

The Contractor shall be responsible for safeguarding and maintaining the integrity of all conflicting utilities. This responsibility includes securing the assistance of available utility location services in the area in which the Work is being performed. The Engineer has attempted to show the location of all utilities anticipated to conflict with the Work. However, when a conflicting utility line is discovered that was not shown on the plans, the Contractor shall contact the utility's owner and notify the Engineer immediately for resolution of the conflict. When realignment or relocation of the Work, or relocation of the conflicting utility is deemed necessary, the Engineer shall give direction in writing for the Contractor to proceed. Work resulting from such direction may be treated as a changed condition, and appropriate authorization and payment will be made in accordance with the General Conditions.

01510.2.2 LOCATING UTILITIES

It shall be the responsibility of the Contractor to locate and expose or identify all existing utilities, both underground and overhead, for the purpose of preventing damage to them. The Contractor shall notify all concerned utility offices at least 48 hours in advance of construction operations in which a utility agency's facilities may be involved. This shall include, but not be limited to, irrigation water, culinary water, telephone, gas, and electric.

01510.2.3 CHANGES TO UTILITIES

The Contractor shall be responsible for any and all changes to, or re-connections to, public utility facilities encountered or interrupted during execution of the Work, and all costs related thereto shall be borne by the Contractor. The Contractor shall negotiate with, and pay, the respective utility agency for work it must do in connection with moving, repairing, or restoring its utility(s). The Contractor shall further make all necessary notifications, scheduling, coordination, and management of details related to any such interference. The potential or projected cost of any public utility interference shall be included in the Contractor's price covering the major Contract Item to which the interference or changes are attributable.

01510.2.4 MAINTENANCE OF SERVICE

01510.2.4.1 CONTINUOUS SERVICE - Unless otherwise required in the Contract Documents, all utilities, both underground and overhead, shall be maintained in continuous service throughout the entire contract period. The Contractor shall be responsible and liable for any damages to or interruption of service caused by the construction.

01510.2.4.2 ACCIDENTAL INTERRUPTION OF SERVICE - In the event of interruption of other utility services as a result of accidental breakage, the Contractor shall promptly notify the appropriate responsible authority. The Contractor shall then cooperate with that authority in restoration of service as soon as possible, and shall bear all cost of repair. In no case shall interruption of any water or other utility service be allowed outside working hours unless the Engineer has issued prior authorization. When changeover of service connections to new utility lines becomes necessary, interruptions of individual services for periods of up to 8 hours will be allowed providing 24 hour advance notice has been given to affected users.

01510.2.4.3 TEMPORARY INTERRUPTION AND RELOCATION - If the Contractor desires to temporarily or permanently relocate or shut down any utility or appurtenance, the Contractor shall make the necessary arrangements and agreements with the owner or operator of the respective utility and shall be completely responsible for all costs concerned with the relocation or shutdown and reconstruction. Shutdown and relocation and/or reconstruction shall be subject to inspection and approval by the Engineer and the owner of the utility.

01510.3 PROTECTION OF PROPERTY AND EXISTING STRUCTURES

01510.3.1 REMOVAL OR RELOCATION OF PROPERTY - All property removed or relocated by the Work shall be reconstructed in its original or new location as soon as possible. Restoration of existing property or facilities shall be to a condition as good or better than its original condition.

01510.3.2 DAMAGE TO PROPERTY - All property damaged by the Contractor, whether inside or outside the limits of easements provided by the Owner, shall be the responsibility of the Contractor. All such damages shall be repaired with like material and restored to its original condition, or better. Such repair or restoration shall be accomplished at the Contractor's expense without additional compensation from the Owner.

01510.4 PROTECTION OF PAVED SURFACES

To avoid unnecessary damage to paved surfaces, tracked equipment shall use rubber cleats or paving pads when operating on or crossing all existing paved surfaces unless authorized otherwise in writing by the Engineer.

01510.5 RIGHTS-OF-WAY AND EASEMENTS

01510.5.1 MINIMAL DISTURBANCE OF RIGHTS-OF-WAY - When construction easements have been obtained by the Owner, the Contractor shall take appropriate measures to minimize disturbances to surface improvements within the easements. The Contractor shall obtain a signed release from each property owner, approving restoration work in the construction easements across its respective property/s.

01510.5.2 CONSTRUCTION AREAS - The Contractor shall confine construction operations to the area within the dedicated rights-of-way for public thoroughfares, or within areas for which construction easements have been obtained, unless the Contractor has made separate special agreements with the affected property owners in advance.

01510.5.3 PROPERTY OWNER NOTIFICATION - The Contractor shall give at least 48 hours advance notification of commencement of construction to property owners having land on which construction will take place. During all construction operations, the Contractor shall construct and maintain such facilities as may be required to provide access by all property owners to their property. No one shall be cut off from access to their property for a period exceeding eight (8) hours unless the Contractor has made special arrangements with the affected persons. The Contractor shall grade all disturbed surfaces required for motor vehicle traffic at least daily unless directed otherwise in the Contract Documents or in writing by the Engineer.

01520.1 DESCRIPTION

This Section includes requirements that shall be followed by the Contractor, to protect the environment, while performing work under this contract. The Contractor shall also comply with any applicable additional requirements made by federal, state, or local government agencies

01520.1.1 RELATED WORK AND REFERENCED SECTIONS

Section 00700 – General Conditions, paragraph 32 (for RDA funded projects)

01520.1.2 SUBMITTALS

Section 01300 – Submittals.

01520.1.3 DEFINITIONS

Not used

01520.2 MATERIALS

Not used

01520.3 CONSTRUCTION REQUIREMENTS**01520.3.1 EXPLOSIVES AND BLASTING**

The use of explosives on the work will not be permitted unless approved otherwise in the Contract Documents or in writing by the Engineer.

01520.3.2 DUST ABATEMENT

01520.3.2.1 CONTROL MEASURES - The Contractor shall furnish all labor, equipment, water and means required to provide effective dust control and abatement measures. Control measures shall be applied as often as necessary and wherever directed in writing by the Engineer, to prevent construction operations from producing dust in amounts that may be damaging to property, vegetation, or animals, or detrimental to persons within reasonable proximity of the work site.

01520.3.2.2 HAUL ROUTES AND WORK SITES - The Contractor shall identify haul routes or material handling areas, outside of the Work site, whereon dust may be generated, and shall exercise appropriate measures to abate any dust problem caused by its operation. Such dust abatement measures shall be taken immediately when observed or when required in writing by the Engineer.

01520.3.3 STORM AND GROUND WATER

01520.3.3.1 CONTROL MEASURES - The Contractor shall provide and maintain, at all times during construction, ample means and devices to promptly remove all water entering the Work, whether the water is surface or ground water. Water removed by the Contractor shall be directed into ponds or areas separated from live streams or drainage ways, to keep sediment from entering live water

- 01520.3.3.2 DRAINAGE PATTERNS - In excavation, fill, and grading operations, the Contractor shall take care, to disturb the existing drainage pattern as little as possible. Particular care shall be taken not to direct drainage water onto private property or into streets or drainage ways inadequate for the increased flow.
- 01520.3.3.3 FORDING OF WATERWAYS - Fording of live streams or any body of live water to accomplish the Work shall not be permitted. Mechanized equipment also shall not be operated in live water to accomplish the Work unless authorized in writing by the Engineer, or in the Contract Documents
- 01520.3.3.4 FILLING OF WATERWAYS - The Engineer will not approve the filling of any ditches, washes, drainage ways, streams, wetlands, or other surface waters by the Contractor to accomplish the Work unless specific instructions are included in the Contract Documents which will provide for how the affected drainages or surface waters are to be treated.
- 01520.3.4 NOISE ABATEMENT
- In or near inhabited areas, particularly residential areas, the Contractor's operations shall be performed in a manner to prevent noise from becoming a nuisance or problem. Particular consideration shall be given to noise generated by repair and service activities during the night hours
- 01520.3.5 CHEMICALS
- All chemicals and/or petroleum based products used during project construction or furnished for project shall be handled, applied and disposed of in strict accordance with the printed instructions of the manufacturer and regulations enforced by Federal, State and Local health authorities.
- 01520.3.6 WASTE AND SURPLUS MATERIALS DISPOSAL
- 01520.3.6.1 CLEAN WORK SITE - The Contractor shall keep the work site, haul roads and other areas of use in a neat, clean condition, free from any accumulation of surplus materials. It shall be the responsibility of the Contractor, at its own expense, to remove and legally dispose of all surplus materials resulting from all Work activities performed in accordance with the Contract Documents.
- 01520.3.6.2 SURPLUS MATERIAL - Surplus material includes, but is not limited to, salvaged materials and equipment that otherwise would have been abandoned in place, rocks too large to be used as backfill, wood and other organic or unsuitable materials, trash, rubbish, and waste products of any nature, and any other debris generated by the Work.
- 01520.3.6.3 REGULATORY COMPLIANCE - Disposal of surplus materials shall be accomplished in accordance with all local codes, laws, ordinances, and all applicable safety laws (particularly to the requirements of Part 1926 of the OSHA Safety and Health Standards for Construction) in affect at the approved disposal site. In no case shall it be acceptable for any surplus material to be disposed of in streams, marshes or wetlands.
- 01520.3.6.4 APPROVAL OF DISPOSAL - The Engineer will not approve any disposal operation, which creates an unsightly and/or unsanitary nuisance. The Contractor shall maintain disposal sites in a reasonable condition of appearance during construction. When designated and/or public disposal sites are unavailable, written approval must be obtained from the Engineer to dispose of any surplus materials on any other site. All disposal sites are subject to approval by the Engineer. The Contractor shall secure permission and all permits required for use of any dumpsite not previously arranged and designated by the Owner. The Contractor shall retain copies, and provide copies upon request, of all disposal permits and/or agreements obtained for the Contract Work

- 01520.3.6.5 SCHEDULED REMOVAL - The Contractor shall establish regular intervals of collection and disposal of surplus materials during construction. Stockpiling of surplus materials for later disposal will not be approved or allowed.
- 01520.3.7 OPEN BURNING
- Open burning of materials may be allowed only in strict accordance with all regulations in effect for the area at which the burning would be performed, and the Contractor shall obtain any necessary permits from the appropriate governing entity prior to the start of burning. The Contractor shall not allow fire to spread beyond the material intended for burning. No accumulation of residue from burning shall remain on or adjacent to the construction site, without written approval of the Engineer.
- 01520.3.8 SANITATION
- 01520.3.8.1 TOILETS - The Contractor shall provide fixed or portable chemical toilets for employee use in conformance with the requirements of Part 1926 of the OSHA Standards for Construction and when public toilets are not available or within fifteen (15) minutes walking distance of the Work site.
- 01520.3.8.2 COLLECTION OF WASTES - The Contractor shall be responsible for daily collection of all sanitary and organic wastes. All wastes and refuse from sanitary facilities provided by the Contractor shall be disposed of away from the site in accordance with all laws and regulations pertaining thereto.
- 01520.3.9 HAZARDOUS MATERIAL
- 01520.3.9.1 REGULATORY COMPLIANCE - Disposition of any hazardous material or toxic or hazardous waste shall be made in accordance with the requirements and regulations administered by the State agency wherein the Work site is located.
- 01520.3.9.2 ABNORMAL CONDITIONS - Abnormal conditions include, but are not limited to, the following: buried barrels with liquid or solid contents; buried or above ground tanks with liquid contents; obnoxious odors; excessively hot earth; stained and discolored soils; smoke; unidentifiable powders, sludge, pellets; or any other similar condition.
- 01520.3.9.3 DISCOVERY AND NOTIFICATION - If any abnormal conditions are encountered during construction, which indicate the presence of a hazardous material, toxic, or hazardous waste, the Contractor shall immediately suspend work in the area of the discovery and notify the Engineer and treat the situation with extreme caution. The Contractor's operation in the area of discovery shall not resume until so directed by the Engineer; however, the Contractor shall continue working in other areas of the project, unless otherwise directed by the Engineer.
- 01520.3.9.4 DISPOSAL - When it becomes necessary for the Contractor to dispose of discovered materials, the work may be considered a change and administered in accordance with the General Conditions. Should the disposition of discovered waste material require special procedures or handling by certified personnel, the Contractor will make all such arrangements. When it becomes necessary to obtain permits for transporting or handling discovered material, the Owner will obtain the permits.
- 01520.3.9.5 SPILLS AND NOTIFICATION - In the event of spills of petroleum-based products or hazardous wastes by the Contractor, the Contractor shall immediately notify the Engineer. The Contractor shall also notify the appropriate State environmental enforcement agency, unless the spill consists of less than one (1) gallon of petroleum based products. In no case will notification be made later

than 24 hours after the discovery of the spill. In addition, written notification shall also be made within 5 calendar days of the discovery.

01520 3 9 6 COST OF CLEANUP - All costs for cleanup and disposal of hazardous materials due to spills, inappropriate handling, or negligence of the Contractor shall be borne by the Contractor.

01520 3 10 ENVIRONMENTAL COMPLIANCE

01520 3.10.1 REGULATORY COMPLIANCE - The Contractor shall comply with the applicable requirements of the National Historic Preservation Act as it relates to the preservation of ALL environmental resources. Clearance for protection of environmental resources located within the designated Work site is the responsibility of the Owner and such clearance has been obtained for the Contract, unless provided for otherwise in the Contract Documents.

01520 3.10.2 DISCOVERY OF HISTORIC/ARCHEOLOGICAL OBJECTS – The Contractor shall observe the following:

- DISCOVERY AND NOTIFICATION - If a suspected or unsuspected historic, archeological, or paleontological item, feature, or site is encountered, construction operations shall be immediately stopped in the vicinity of the discovery and the Engineer shall be notified of the nature and exact location of the findings. The Contractor shall not damage the discovered objects and shall provide written confirmation of the discovery to the Engineer within two (2) calendar days.
- RESTRICTION OF CONSTRUCTION - Should operations in the vicinity of a discovery be restricted, the Engineer will keep the Contractor informed concerning the status of the restriction. The Contractor should be aware that the time necessary for the Owner to negotiate the handling of the discovered is variable and is dependent on the nature and condition of the circumstances. It is possible that a delay of as much as three weeks in the vicinity of the discovery can be expected. The Engineer will inform the Contractor when the restriction is terminated. Changes required to accommodate delay or Work resulting from the discovery will be authorized in accordance with the General Conditions.

01520.3.11 OPERATIONS OUTSIDE OF THE PROJECT SITE

In the event the Contractor chooses to use any site or means of obtaining resources beyond those provided as part of the Contract, the Contractor shall retain the services of a qualified, certified environmental consultant to produce a research design or plan for obtaining any and all necessary environmental clearances for such use. The Contractor shall provide the plan to the Engineer for review and approval, as required, following which the plan shall be implemented. The Contractor shall submit evidence of environmental clearances and compliance before commencing any activities within the extended use area. At a minimum, clearances will include those listed below. Additional clearances may be required as necessary.

01520.3.11.2 CULTURAL RESOURCES (Archeological and Historic) - Clearance may require consultation with the State Historic Preservation Office.

01520 3 11 3 THREATENED AND ENDANGERED SPECIES - Compliance may require written clearance from the U S Fish and Wildlife Service.

01529 3 11 4 FLOOD PLAINS – May require consultation with the Federal Emergency Management Agency (FEMA) or corresponding state agency.

01520.3.11.5 **WETLANDS AND OTHER BODIES OF WATER** – May require consultation with the Army Corps of Engineers and/or appropriate state agency.

The Contractor is cautioned that obtaining environmental clearances can be costly and time consuming

01520.4 **METHOD OF MEASUREMENT**

Not used.

01520.5 **BASIS OF PAYMENT**

Not used.

01580.1 DESCRIPTION

In general, the Contractor is responsible for providing and maintaining access to the Work, handling and storing of materials and equipment, safety and security within the Work site, and coordination and cooperation with the Owner, its representatives, governing authorities and other contractors working for the Owner in accordance with the provisions of the General Conditions. This section contains specific requirements which apply to these responsibilities.

01580.1.1 RELATED WORK AND REFERENCED SECTIONS

Not used.

01580.1.2 SUBMITTALS

Required submittals are described in SP13110.

01580.1.3 DEFINITIONS

Not used.

01580.2 WORK SITE ACCESS**01580.2.1 INVESTIGATION OF WORK SITE AREA**

The Contractor shall make its own investigation of the condition of available public and private roads and of clearances, restrictions, bridge load limits, and other limitations affecting ingress and egress to the site of the work.

01580.2.2 HAUL ROADS

It shall be the Contractor's responsibility to construct and maintain any new haul roads required for its construction operations.

01580.2.3 USE OF PUBLIC STREETS AND ALLEYWAYS

Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, alleyway, or parking area during the performance of the Work, unless shown otherwise in the Contract Documents.

01580.2.4 CLOSURE OF PUBLIC ROADWAYS

No street, road, or highway shall be closed to the public without first obtaining permission from the proper governmental authorities and the Engineer. Where excavation is being performed in streets or highways, one lane in each direction shall be kept open to traffic at all times, unless otherwise authorized by the Contract Documents or the Engineer. Toe boards, or other measures, may be required by the Engineer to retain excavated material when deemed necessary.

01580.2.5 INTERFERENCE WITH UTILITIES

The Contractor shall so conduct operations as not to interfere unnecessarily with the infrastructure of utility companies or other agencies in such streets, alleyways, or parking areas.

01580.3 PUBLIC SAFETY AND ACCESS

Fire hydrants, approaches to fire stations, police stations and hospitals on or adjacent to the Work shall be kept accessible at all times. Appropriate measures shall be taken by the Contractor, to assure the use of sidewalks, and the proper functioning of all gutters, sewer inlets, water mains, drainage facilities and other infrastructure

The Contractor's responsibility for Work safety or liability for Work site accidents is not lessened by the presence of the Engineer or his or another inspector performing monitoring of Work site safety conditions.

01580.4 CONTRACTOR'S USE OF THE WORK SITE

The Contractor's use of the Work site shall be limited to its construction operations. Written approval by the Engineer will be required for any other use of the site, such as material and equipment storage, personnel vehicle parking, on-site fabrication facilities and field office

01580.5 OFF-SITE STORAGE

The Contractor shall make arrangements for, bear any use costs associated with, and obtain written permission from the Engineer prior to using any off-site storage or shop areas or facilities determined necessary for execution of the Work. Storage facilities shall be equipped with fences and/or lockable entries that will prevent entry by unauthorized parties. Before off-site storage facilities are placed in use, the Contractor shall provided the Owner keys or combinations to locking devices used to secure the facility.

01580.6 COOPERATION WITH OTHER CONTRACTORS

Prior to authorizing other contractors to work on or adjacent to the Work site, the Owner shall notify the Contractor in writing and provide the name and address of the contractor, the name of its supervisor, a description of the work to be performed, and a schedule which shows the dates and planned segments of the work to be completed by the other contractor. In the event that conflicts or interferences occur between the Contractor and the other contractor's operation, the Engineer shall be notified immediately. The Engineer shall then take appropriate action needed to resolve the problem.

PART 3

MOBILIZATION

02000.1 DESCRIPTION

This section describes preparatory work and materials necessary for obtaining clearances for the Work; moving personnel, equipment, supplies and incidentals to the Project Site; quality control; clean-up; temporary utilities and quarters; permits, bonds and insurance; dust abatement, storm water control, and noise abatement; waste and rubbish disposal and control; sanitation; and project close-out operations.

02000.1.1 RELATED WORK AND REFERENCED SECTIONS

Section 01200 - Contract Closeout
 Section 01510 - Protection of Existing Property
 Section 01520 - Environmental Controls
 SP13110 - Test Well Construction

02000.1.2 SUBMITTALS

Required submittals are described in SP13110.

02000.2 MATERIALS

Required materials are described in SP13110.

02000.3 CONSTRUCTION REQUIREMENTS

Construction requirements are described in SP13110.

02000.4 METHOD OF MEASUREMENT

Mobilization shall be measured by the lump sum

02000.5 BASIS OF PAYMENT

2000.5.1 The accepted quantity(s) shall be paid for at the contract unit price for:

| PAYMENT ITEM | UNIT |
|---------------------|-------------|
| Mobilization | Lump Sum |

02000.5.2 PAYMENT SCHEDULE

The amount bid or identified in a schedule of values for Mobilization shall not exceed 10% of the total contract bid amount. The following payment schedule percentages shall be based on amount bid or identified in a schedule of values for Mobilization up to a maximum of 10% of the total contract bid. Any portion of the mobilization bid amount which exceeds 10% of the total contract bid amount will be paid to the Contractor after final acceptance of the Work, with the last mobilization payment (See "overage amount" in the payment schedule table below)

Partial payments for Mobilization will be made in accordance with the payment schedule table below

MOBILIZATION PAYMENT SCHEDULE

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

PART 4

SPECIAL CONSTRUCTION

SPECIAL PROVISION

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| TEST WELL CONSTRUCTION | SECTION SP13110 |
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13110.1 DESCRIPTION

This section covers construction of two test wells (Test Wells #1 and #2) in the vicinity of the Central Utah Correctional Facility in Gunnison, Utah, which includes furnishing all materials, equipment, and labor to: drill, install casing, perforate part of the casing or install a screen (depending on the drilling method to be used), develop, perform pumping tests, clean and remove equipment and materials and abandon test wells. If any requirement in this Section is found to be in conflict with other pertinent Utah Drinking Water Regulations, the more stringent requirements shall govern unless otherwise directed by the Engineer

13110.1.1 SCOPE OF WORK

- A. The Contractor shall choose one of the drilling methods: cable tool, air rotary and/or reverse circulation drilling methods to construct one or two 10-inch diameter test well(s) to a depth of approximately 600 feet. The target production will be 300 gallons per minute (gpm). The results of Test Well #1 will be one of the factors to determine whether Test Well #2 will be drilled. If Test Well #1 produces 300 gpm or more, Test Well #2 will not be drilled. Drilling Test Well #2 will depend on (1) the result of the pumping test at Test Well #1 that would demonstrate insufficient flow and (2) sufficient funds available. The alternate bid for the 2nd test well can be accepted by the OWNER for a period of 30 days following the test results for the 1st test well. The acceptance of the 2nd test well within this period shall not result in an additional mobilization fee by the CONTRACTOR. The location of the two test wells is shown on the drawings in the Appendix.
- B. The Contractor shall install a conductor casing to a depth of 50 feet if the rotary drilling method is chosen or 100 feet if the cable tool drilling method is chosen. The diameter of the conductor casing will be depending on the drilling method to be used. If the cable tool drilling method is chosen, the diameter of the conductor casing will be 16 inches. If the rotary drilling method is chosen, the diameter of the conductor casing will be 20 inches.
- C. If the rotary drilling method is chosen, the Contractor shall drill a 12-inch diameter test well hole to a depth of 600 feet. If the cable tool drilling method is chosen, the Contractor shall drive an 8-inch diameter casing into a depth of approximately 600 feet.
- D. The Contractor shall complete a Lithologic Log of each test well to determine the most accurate location and thickness of each water-bearing stratum, including a short descriptive summary of the materials encountered with depth. Lengths and locations of perforated sections in the well casing will be determined based on this data. To meet this requirement, the Contractor shall collect samples at 5-foot intervals. Each sample shall be placed in a bag and labeled to indicate the sampling interval. These samples shall be available to the Owner and the Engineers any time.
- E. If the rotary drilling method is chosen, the following tasks shall be performed:
- (1) The Contractor shall perform a geophysical logging survey for each well hole.
 - (2) After the geophysical logging survey is completed and reviewed by the Engineers, the Contractor shall install an 8-inch diameter (8" OD) well casing column and a screen to a depth of 600 feet at each test well. The length of the casing and screen will be determined by the Engineers based on the geophysical logging survey. The screen size will be determined by the Engineers based on

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laboratory gradation analyses of representative samples. After the lengths of the casing and screen and the size of the screen are determined, the Contractor will deliver and install the casing and screen.

(3) Based on laboratory gradation analyses of representative samples and the geophysical logging survey, the Engineers will determine the size and quantity of a gravel pack. The Contractor shall provide and place the gravel pack.

(4) The Contractor shall develop the well with the rig for 8 hours.

- F. If the cable tool drilling method is chosen, the Engineers will review the drilling log with the Contractor and determine the perforation interval and size. The Contractor shall perforate with a Mills knife the casing as recommended by the Engineers.
- G. The Contractor shall install pumping test equipment to a depth of up to 500 feet at each test well, and perform pumping tests for the test wells as directed by the Engineer. If the cable tool drilling method is chosen, the Contractor shall develop the well for 8 hours before performing pumping tests.
- H. If the pumping test indicates the test well is a desirable producer determined by the Owner and/or the Engineer, the test well will be converted to a production well. The Contractor shall contact the Utah Division of Drinking Water to schedule a date for construction of the surface seal so that a representative from the Division can supervise the construction. The Contractor shall provide the material and necessary equipment for the installation of the surface seal for each well extending from the ground surface to a depth of 100 feet below grade.
- I. The Contractor shall not allow any dirt or mud to leave the project site. The Contractor may, at his own cost, install a gravel base at an appropriate location on the project site used for a dirt containment system / wash down area.
- J. The Contractor shall abandon the test well should the pumping test results indicate the test well is not a desirable producer.

13110.1.2 SUBMITTALS

All submittals shall be made in accordance with Section 01300 of these Specifications and any other requirements stated herein.

13110.1.2.1 CUTTING SAMPLES – See 13110.3.2.3

13110.1.2.2 WELL LOG AND DAILY REPORT – See 13110.3.2.4

13110.1.3 DEFINITIONS

Abandoned Well - A well which is not in use and has been filled or plugged so that it is rendered unproductive and will prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water-bearing zones.

Air Line - A small vertical air pipe usually extending from the surface and submerged to within a few feet of the bottom of the eductor pipe.

Annular Space - The space between the inner well casing and the outer well casing or borehole.

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Aquifer - A porous underground formation yielding with drawable water.

Artesian Well - A water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

Bailer - An elongate pipe bucket with a valve at the bottom used to remove cuttings from the drill hole.

Bentonite - A highly plastic, colloidal clay composed largely of mineral montmorillonite.

Casing - A tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

Cementing - A technique of installation of cement materials by pumping or pouring from the bottom of the zone upward via a tremie pipe extending to the surface.

Clay - A fine-grained inorganic material (grains less than 0.0005 mm in diameter) which is plastic and has very low permeability.

Conductor Pipe - A tubular retaining structure installed between the drill hole and the inner casing, in the upper portion of a well.

Curing Time - Minimum time required for particular types of cementing or grouting materials to harden (or set up) before drilling or other construction operations can be resumed.

Drawdown - The difference in elevation between the static and pumping water levels.

Drilling Mud - A fluid composed of water and bentonite used in the drilling (primarily rotary) operation to remove cuttings from the hole, to clean and cool the bit, to reduce friction between the drill stem and the sides of the hole, and to plaster the sides of the hole. Such fluids range from relatively clear water to carefully prepared mixtures of special purpose compounds.

Drive Shoe - A forged steel collar with a cutting edge fastened onto the bottom of casing to shear off irregularities in the hole as the casing advances, and to protect the lower edge of the casing as it is driven.

Eductor - The vertical discharge pipe connected to the submerged pump or pump bowls.

Filtering - The configuration of openings and/or screen material installed in the well casing to allow entry of water into the well.

Gravel Packed Well - A well in which filter material is placed in the annular space to increase the effective diameter of the well, and to prevent fine-grained sediments from entering the well.

Groundwater - Subsurface water in the zone of saturation.

Grout - A fluid mixture of Portland cement or Bentonite with water of a consistency that can be forced through a pipe and placed as required. Various additives, of sand, bentonite and hydrated lime, may be included in the mixture to meet certain requirements.

Lift - The vertical distance from the pumping level to the point of discharge of the water plus the friction loss in the eductor pipe.

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Packer - A device placed in a well which plugs or seals the well at a specific point.

Perforations - A series of openings in a well casing, made either before or after installation of the casing, to permit entry of water into the casing

Permeability - The ability of a medium (porous geological strata, etc) to transmit water.

Static Level - Stabilized water level in a non-pumped well beyond the area of influence of any pumping well.

Telescoping - a method of fitting or placing one casing inside another, or of introducing screen through a casing diameter larger than the diameter of the screen.

Test Well - Well completed only to a point sufficient for test sampling and/or pumping

Transmissivity - The rate at which water is transmitted through an aquifer.

Tremie Pipe - A device that carries materials to a designated depth in a drill hole or annular space

Water-Cement Ratio - The amount of mixing water in gallons used per sack of cement

Water Table - The levels at which water stands in wells.

Well Logging - Logging consists of several different techniques and observations that measure and record electrical, physical, chemical, or radio-active properties of the drill hole wall surface and water.

Well Point - A short length of well screen attached to the lower end of the pipe for the purpose of de-watering an aquifer or other formation. It is driven into position in the aquifer or formation via repeated blows. Usually, a forged steel point is attached to the lower end of the screen to facilitate penetration.

Well Screen - Serves as the intake section of the well that obtains water from an aquifer of unconsolidated materials such as sand. It allows water to flow freely into the well from water saturated sand, prevents sand from entering with the water and serves as a structural retainer to support the bore hole in unconsolidated material.

13110.2 MATERIALS

All materials shall meet AWWA Standard A-100, ASTM or API specifications found in R655-4 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 19, 1995, Division of Water Rights), and shall consist of the following:

13110.2.1 CASING

WELL CASING – Well casing shall project at least 18 inches above the anticipated final ground surface. Well casing shall be mild steel spiral welded casing meeting the requirements of ASTM A-139-061, Grade B, of the size shown in the table below

| Casing Application | Diameter (Inches) | Minimum Wall Thickness (inches) |
|--------------------|-------------------|---------------------------------|
| Steel Casing | 8 | 0.250 |

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- 13110.2.2a WELL PERFORATION – This item only applies to the cable tool drilling method. Well casing perforation intervals shall be approximately 300 feet for each test well. The actual length and location of perforation intervals shall be determined after the well drilling is completed. Perforation parameters shall be determined based on materials encountered.
- 13110.2.2b WELL SCREEN – This item only applies to the rotary drilling method. Approximately 300 feet of the well (refer to the Appendix) shall be screened using continuous wedge wire wrapped 304 stainless steel well screen. The actual length and location of screen intervals shall be determined after the well drilling is complete. Screen parameters shall be determined based on sieve analysis of formations and gravel pack materials.
- 13110.2.3 CASING GUIDES
- If necessary, casing guide shall be 5/16-inches thick, 2-inches in width, and 30-inches in length and shall be made of the same material as the well casing or screen sections to which they are attached.
- 13110.2.4 GROUT
- Grout shall not be used for test well construction until the Owner and the Engineer have decided to convert the test well to a production well. If necessary, any type described below may be used. The use of special cements, bentonite to reduce shrinkage, or other admixtures (ASTM C494) to reduce permeability, increase fluidity, and/or control time of set and the composition of the resultant slurry must be approved by the Engineer. Concrete grout consists of a mixture of Portland cement (ASTM C150), sand and water. The mixture shall include not more than one part by weight of sand and one part of cement and not more than six gallons of clean water per bag (1 cubic foot or 94 pounds) of cement. Neat cement grout consists of a mixture of Portland cement (ASTM C150) and not more than six gallons of clean water per bag (1 cubic foot or 94 pounds) of cement.
- 13110.2.5 CASING COLLARS
- When specifically authorized by the Engineer for joining sections of casing, collars shall be of the same thickness and material as the corresponding casing section. Collar width shall be 6 inches and they shall be rolled to fit the outside diameter and then welded to the casing section. The inside edge of collars shall be ground or sufficiently scarified perpendicular to the axis of the casing so as to not vary more than 0.010 inch from a true plane at right angles to the axis of the casing. Three 1 inch by 3/8 inch alignment holes shall be provided in each collar to insure proper matching of the sections.
- 13110.2.6 BENTONITE SEALING MATERIAL
- Due to the fact that the annular space between the drill hole and well casing is not 6 inches or more, bentonite sealing for this well is prohibited if a surface seal is required.
- 13110.2.7 TREMIE PIPE
- This item only applies to the rotary drilling method. A Tremie pipe shall be 1½-inch galvanized pipe extending from the bottom of the water production zone to the top of the well casing. A refill section, installed in accordance with the Drinking Water Regulations shall be included at the top of the Tremie pipe.
- 13110.2.8 WELL CASING PERFORATIONS

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This item only applies to the cable tool drilling method. The Contractor shall use a Mills knife to perforate the well casing. The placement of perforations shall be made after an examination of the drill cuttings in combination with a study of the driller's log. In general, the placement of perforations in the well casing shall be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and be of dimensions and size to restrain the water bearing materials from entering into the well.

13110.2.9 GRAVEL PACK

This item only applies to the rotary drilling method. Gravel pack shall be more than 95% of siliceous material (SiO₂), having a sphericity of 0.8+ and a roundness of 0.7+ to minimize bridging, settling, and compaction while maintaining a porosity of more than 45%, as distributed by Colorado Silica Sand, Inc., or approved equivalent. Grain size and grading of the gravel pack shall be determined based on sieve analysis of formations. The mixture shall be delivered in sealed, 1 cubic-foot minimum bags to the well site. The bags shall be protected against damage and/or contamination from dirt or moisture during storage. The gravel pack shall be disinfected in accordance with the requirements of ANSI/AWWA A-100.

13110.2.10 WATER FOR CONSTRUCTION

The Owner will make water for construction available at no cost to the Contractor. The Contractor will be responsible for furnishing all labor, materials, and equipment deemed necessary for transporting and storing the water for drilling purposes.

13110.3 CONSTRUCTION REQUIREMENTS

13110.3.1 SITE PREPARATION, PROTECTION, TEMPORARY FACILITIES AND ACCESS

13110.3.1.1 The test well sites shall be located at locations approved by the Owner and the Engineer prior to drilling rig setup. The Contractor shall set up his rig on site. If required, additional clearing, grubbing and site leveling shall be performed as necessary.

13110.3.1.2 The Contractor shall repair any damage to the properties near the well sites at no expense to the Owner. The Contractor shall be also responsible for snow removal when necessary as part of mobilization to and from the site.

13110.3.1.3 The Contractor shall take measures to ensure that the site is protected from diesel fuel, oil, or other contaminants that may be inherent with drilling equipment. Immediately beneath the drill rig or other contaminant producing equipment, the contractor shall install plastic to ensure that possible oil or fuel leaks are contained. Any garbage or debris that is brought in by the Contractor shall be removed from the site.

13110.3.1.4 The Contractor shall comply with all local, County, State and Federal noise ordinances and regulations.

13110.3.1.5 The Contractor shall be responsible for the safety and security of the project site. The Contractor shall provide all necessary temporary controls, including, but not limited to barricades, fencing, and signage required for protection of the public and the work. All costs associated with safety and security controls shall be included in the Contractor's bid amount. All temporary controls shall be removed from the site at the completion of the work at no additional cost to the Owner.

13110.3.2 DRILLING

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13110.3.2.1 CONSTRUCTION METHODS - Drilling shall proceed in accordance with the requirements of ANSI/AWWA A-100 The Contractor shall use the Cable Tool or Air or Reverse Rotary Drilling Method for construction of the test wells.

13110.3.2.2 CUTTING SAMPLES – As drilling proceeds, formation samples shall be collected at intervals not exceeding 5 feet and at the depth of each formation change observed thereafter to the total depth of the drill hole. Unless otherwise authorized by the Engineer, each sample shall be retained in a vinyl plastic bag, labeled to identify its specific location in the hole and shall be available to the Engineer any time.

13110.3.2.3 WELL LOG – During the drilling of the well hole, the Contractor shall work with the Geologist or Engineer and shall make appropriate measurements and maintain a lithologic log which shall include the following:

- The reference point for all depth measurements.
- The depth at which each change of formation occurs.
- The depth at which the first water was encountered.
- The depth at which each stratum was encountered.
- The thickness of each stratum.
- The identification of the material of which each stratum is composed, such as:
 - ⇒ Clay
 - ⇒ Sand or Silt
 - ⇒ Sand and Gravel - indicating whether gravel is loose, tight, angular or smooth; color
 - ⇒ Cemented Formation - indicating whether grains (if present) have natural cementing material between them, e.g. silica, calcite, etc.
 - ⇒ Hard Rock - indicating whether sedimentary bedrock, or igneous (granite-like, basalt-like, etc.)
 - ⇒ Fracturing condition
- The depth interval from which formation sample was taken
- The depth at which the hole diameter (bit size) changes
- The depth to the static water level (SWL) and changes in well depth

DAILY REPORT – In addition to the Well Log, the Contractor shall maintain a daily report, which shall be delivered, upon request, to the Engineer. The report shall give a complete description of all formations encountered, number of feet drilled, number of hours on the job, shutdown due to breakdown, the water level in the well at the beginning and end of each shift, water level at each change of formation if readily measurable with the drilling method used, footage of casing set, and such other pertinent data as maybe requested by the Engineer.

13110.3.2.4 WATER SAMPLING – The Contractor is responsible to help the Engineer collect water samples at the conclusion of pumping tests.

13110.3.2.5 VERIFICATION OF PLUMBNESS AND ALIGNMENT – The Contractor shall verify alignment and plumbness prior to development and testing of the well. This shall be accomplished in accordance with the requirements of ANSI/AWWA A-100. Should the plumbness or alignment of the well fail to meet the requirements of ANSI/AWWA A-100, the Contractor shall make appropriate adjustments to the well as necessary, at its own expense. Should the Contractor fail to correct faulty alignment and plumbness, the Owner may refuse to accept the well.

13110.3.3 WASTE CONTROL

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The Contractor shall supply and maintain piping and holding facilities of sufficient size to safely and satisfactorily accommodate water, fluid and other materials removed from the well hole, so as to not create a nuisance or hazard to the surrounding environment. No debris or water shall be allowed to be moved/discharged to adjacent properties. Material removed during drilling shall be contained and small particles within the water must be settled out before discharging into any drain system. The Contractor shall be responsible for containing, loading, and transporting all filings to an off-site location approved by the Owner and the Engineer.

13110.3.3.1 The Contractor shall take appropriate measures to prevent erosion caused by water resulting from drilling and test pumping operations. The Contractor shall supply temporary piping as required from the well site to a drain system near the well site to discharge water from test pumping.

13110.3.4 CLEANLINESS AND DISINFECTION OF WELL MATERIALS AND COMPONENTS

All parts and materials installed in the well shall be cleaned and disinfected prior to incorporation into the well. Well column piping shall be scrubbed if necessary to remove any oil or grease, and sprayed with a chlorine solution, then rinsed with clean water before installation.

13110.3.5 CASING

13110.3.5.1 CONSULTATION – Before proceeding with installation of any well casing, the Contractor shall consult with the Engineer and obtain instructions.

13110.3.5.2 MEASUREMENT AND MARKING– The Contractor shall measure and record the lengths of all casing and then clearly mark and number the top end of all casing sections before any casing is placed in the drill hole. This information shall be delivered to the Owner.

13110.3.5.3 CASING INSTALLATION – Installation of the well casing shall be accomplished by lowering, driving with a drive shoe, driving with a well point, or jacking. Full penetration butt welds shall be used to join lengths of well casing so that any resulting joint shall be watertight and have the same structural integrity as the casing itself.

13110.3.5.4 Three casing guides shall be equidistantly spaced around the well casing at 40-foot intervals measured from the bottom of the well casing, unless otherwise directed by the Engineer. Casing guides shall be of the same material as the casing to which they are attached.

13110.3.6 WELL CONTAMINATION

The Contractor shall take such precautions as necessary to prevent contaminated water or other materials from entering the well. In the event that the well becomes contaminated or if water having undesirable physical or chemical characteristics does enter the well due to the neglect of the Contractor, the Contractor shall perform such work or supply such materials as may be necessary, and at no additional cost to the Owner, to eliminate the contamination. If the contamination to the well does not result from neglect or action on the part of the Contractor, the work required to remove such contamination shall be treated as a change in accordance with Section 00700.13 of the General Conditions.

13110.3.7 GROUTING

Grouting shall not be required for the test wells construction project until the Owner and/or Engineer has determined to convert the test well to a production well. If required, the Contractor shall notify the appropriate regulatory officials to proceed with grout placement. The State Regulatory Officials must witness grout placement during well construction. Grouting shall be

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accomplished with suitable pumps and Tremie pipes. Grout shall be installed under pressure from the bottom of the zone to be grouted. The top 100 feet of the well annulus shall be sealed with grout unless otherwise directed by the Engineer.

Protection shall be provided to prevent leakage of grout into any gravel pack or screen section. This shall be accomplished, at the Contractor's option, through the use of packers or by other industry standard method, which is approved for use by the State of Utah Drinking Water Regulations.

13110.3.8 GRAVEL PACKING

This item only applies to the rotary drilling method. A gravel pack shall be installed from the bottom of the well to the grout seal, as directed by the Engineer, and in accordance with the State of Utah Drinking Water Regulations. The Contractor shall be responsible to ensure that the gravel material is adequately protected from contamination during storage and disinfected during installation as required by the State of Utah Drinking Water Regulations. The gravel pack material shall be placed and then slowly raising the Tremie pipe as the packing progresses. Water shall be pumped into the Tremie pipe to help carry the gravel material. The gravel pack shall be placed in one uniform and continuous operation and shall be disinfected during installation. Following installation, the gravel pack shall be cleaned. Cleaning shall be accomplished by surging water back and forth through each screen until the water pumped from the well is reasonably clear. While the cleaning progresses, the level of the gravel pack in the well annulus shall be examined. If the level of the gravel pack drops during the process of cleaning, additional gravel pack material shall be placed through the Tremie pipe to maintain the pack level as prescribed in the well design until the cleaning is complete.

13110.3.9 DEVELOPMENT

13110.3.9.1 Prior to development pumping, the entire well casing shall be swabbed and flushed with water until clean. All mud, debris, and foreign material shall be removed from the well casing.

13110.3.9.2 Development pumping shall be started within 5 days after completion of swabbing and flushing of the well. The Contractor shall furnish, install, operate and remove a pump system for developing the well, which is sized to be capable of providing a pumping rate twice the amount of production indicated in the Scope of Work in this Section. The flow rate of the pump shall be variable from the lowest amount the test pump will produce to the maximum pumping rate with the accuracy range required by ANSI/AWWA A-100.

13110.3.9.3 Usually, pumping starts at a relatively low rate and the pumped water carries particulate and/or color. If neither is observed, the pumping rate shall be slowly increased. Once sand and/or color in the discharge are observed, the pumping rate shall be maintained while the water level is monitored. Pumping shall be continued until the discharging water becomes clear and the sand content in the water has dropped considerably. When a fairly stable water level at a pumping rate is reached, the pumping shall be stopped to surge the well through the screened or perforated area. After a 5-minute recovery, the pumping shall be resumed at the rate when it was shut off. The process described herein shall be repeated until an increase in pumping rate is necessary to continue the development.

13110.3.9.4 The pumping rate shall be increased only when the repeated pumping and surging process at that rate does not remove any sand and/or colored water from the well. Pumping shall never be stopped, nor shall the well be surged, while large quantities of sand are being carried with the discharging water. The pumping rate shall be incrementally increased, with periodic surging at each stage. These cycles of pumping and surging shall be repeated until the discharged water is

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clear of mud, sand, and silt when the maximum pumping rate determined by the Engineer is reached.

13110.3.10 TESTING

13110.3.10.1 The well shall stand idle for at least one day prior to test pumping, or the static water level in the well shall be fully recovered. Test pumping shall be continuous until a steady-state condition has been reached (a minimum of six hours unless otherwise directed by the Engineer) or for 24 hours. The Contractor must maintain a pumping test record (see the sample Pump Test Record Sheet included at the end of this section).

13110.3.10.2 Time intervals for water level readings provided for aquifer parameter analysis are as follows:

- Measure every 0.5-1 minute during 0-10 minutes after start of test;
- Measure every 1-3 minutes during 10-15 minutes after start of test;
- Measure every 5-10 minutes during 15-60 minutes after start of test;
- Measure every 10-30 minutes during 60-300 minutes after start of test;
- Measure every 30-60 minutes during 300-1440 minutes after start of test;
- Measure every 60-480 minutes beyond 1440 minutes after start of test to test termination

13110.3.10.3 To accomplish Performance Test Pumping, the Contractor shall:

- Furnish the discharge pipe necessary to transmit water away from the pumping unit to an area where the full pump test rated flow over long periods of time will not erode or damage the land. The Contractor shall also furnish, install and maintain equipment of appropriate size and type for measuring the flow of water; such equipment may be weir box, orifice or water meter.
- Except as otherwise noted, the Contractor shall furnish all equipment, labor, power, and all necessary tools, materials, and supplies required and shall operate the pumping unit at such rates of discharge and for such periods of time as directed. Accidental interruptions of test pumping for a period of time may, if so agreed, extend the time of the completion of the test run by a corresponding amount of time. After completion of the final test the Contractor shall remove any sand, stones or other foreign material that may have become deposited in the well.
- The Contractor shall keep a record of the pump testing. This record shall include: a) test pump capacity versus head characteristics, b) static water level, c) depth of test pump setting, d) time of starting and ending each test cycle. The Contractor shall also provide recordings and graphic evaluation at one-half hour intervals or less of the following: a) pumping rate, b) pumping water level, c) drawdown, and d) water recovery rate levels after the pump is shut off.
- Step drawdown tests should be conducted after the static water level has stabilized for at least 12 hours. The well shall then be pumped at 3-4 different step rates as directed by the Engineer. Each step shall be pumped as directed by the Engineer, but for a minimum of 2 hours. During each step period, the well water level shall be measured and recorded in accordance with the time intervals recommended in paragraph 13110.3.10.2 above or as otherwise directed by the Engineer.
- After the step drawdown tests, the well shall stand idle until the static water level in the well is fully recovered. The well shall then be pumped for at least 24-hours at the maximum possible rate determined by the Engineer, and water level measurements shall be taken as described in 13110.3.10.2 and checking the constant discharge. Water level recovery measurements shall be taken immediately following the completion of the test pumping. Under the direction of the Engineer, water samples shall be collected in special sample bottles at the end of the pumping test.

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13110.3.11 FINAL DISINFECTION

Final disinfection is not required for test well construction

13110.3.12 WELL CASING REMOVAL AND WELL ABANDONMENT

13110.3.12.1 After test pumping and approval by the Engineer, the Contractor shall remove all equipment from the well. The Contractor shall also remove the well casing if possible for abandoning the test well.

13110.3.12.2 The Contractor shall use neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout to abandon the test well. Drilling mud or drill cuttings shall not be used as any part of a sealing material for well abandonment. The liquid phase of the abandonment fluid shall be water from a potable municipal system. State abandonment procedures shall be followed.

13110.4 METHOD OF MEASUREMENT

Measurement of the various pay items included on the Bid Schedule associated with water well construction shall be made according to the following paragraphs. Items not listed on the Bid Schedule are considered incidental to other work items.

13110.4.1 Mobilization: By the lump sum.

13110.4.2 Conductor Casing: By measuring the lineal footage of casing materials used in the drill hole

13110.4.3 Well Drilling: By measuring the lineal footage of depth of the hole drilled, sampled and logged, measured from the original ground surface to the bottom of the hole

13110.4.4 Geophysical Logging: By the lump sum.

13110.4.5 Casing: By measuring the lineal footage of casing materials used in the drill hole

13110.4.6 Screen: By measuring the lineal footage of screen

13110.4.7 Casing Perforation: By measuring the lineal footage of perforated casing

13110.4.8 Tremie Pipe: By measuring the lineal footage used in the drill hole

13110.4.9 Gravel Packing: By counting the cubic yardage of material used in the drill hole

13110.4.10 Conductor Casing Removal or Perforation: By the lineal footage to be removed.

13110.4.11 Grout: By the lineal footage to be grouted

13110.4.12 Test Pump Furnishing, Installation and Removal: By the lineal footage.

13110.4.13 Development Pumping: By the hour

13110.4.14 Test Pumping: By the hour

13110.4.15 Well Abandonment: By the lump sum

13110.4.16 Well Driller's Report Preparation: By the lump sum

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13110.5 BASIS OF PAYMENT

13110.5.1 The accepted quantities will be paid for at the contract unit price.

| PAY ITEM | UNIT |
|---|-------------|
| Mobilization | Lump Sum |
| (Size)" Diameter Conductor Casing | Lineal Foot |
| (Size)" Diameter Hole Drilling and Well Log Preparing | Lineal Foot |
| Geophysical Logging | Lump Sum |
| (Size)" Diameter Casing Furnishing and Installing | Lineal Foot |
| (Size)" Casing Perforation | Lineal Foot |
| (Size)" Screen | Lineal Foot |
| Tremie Pipe | Lineal Foot |
| Gravel Packing | Cubic Yard |
| Furnish, Install and Remove Test Pump | Lineal Foot |
| Development Pumping | Hour |
| Test Pumping | Hour |
| Conductor Casing Removal or Perforation | Lineal Foot |
| Surface Seal | Lineal Foot |
| Well Abandonment | Lump Sum |
| Well Driller's Report Preparing | Lump Sum |

APPENDIX
CONTRACT DRAWINGS

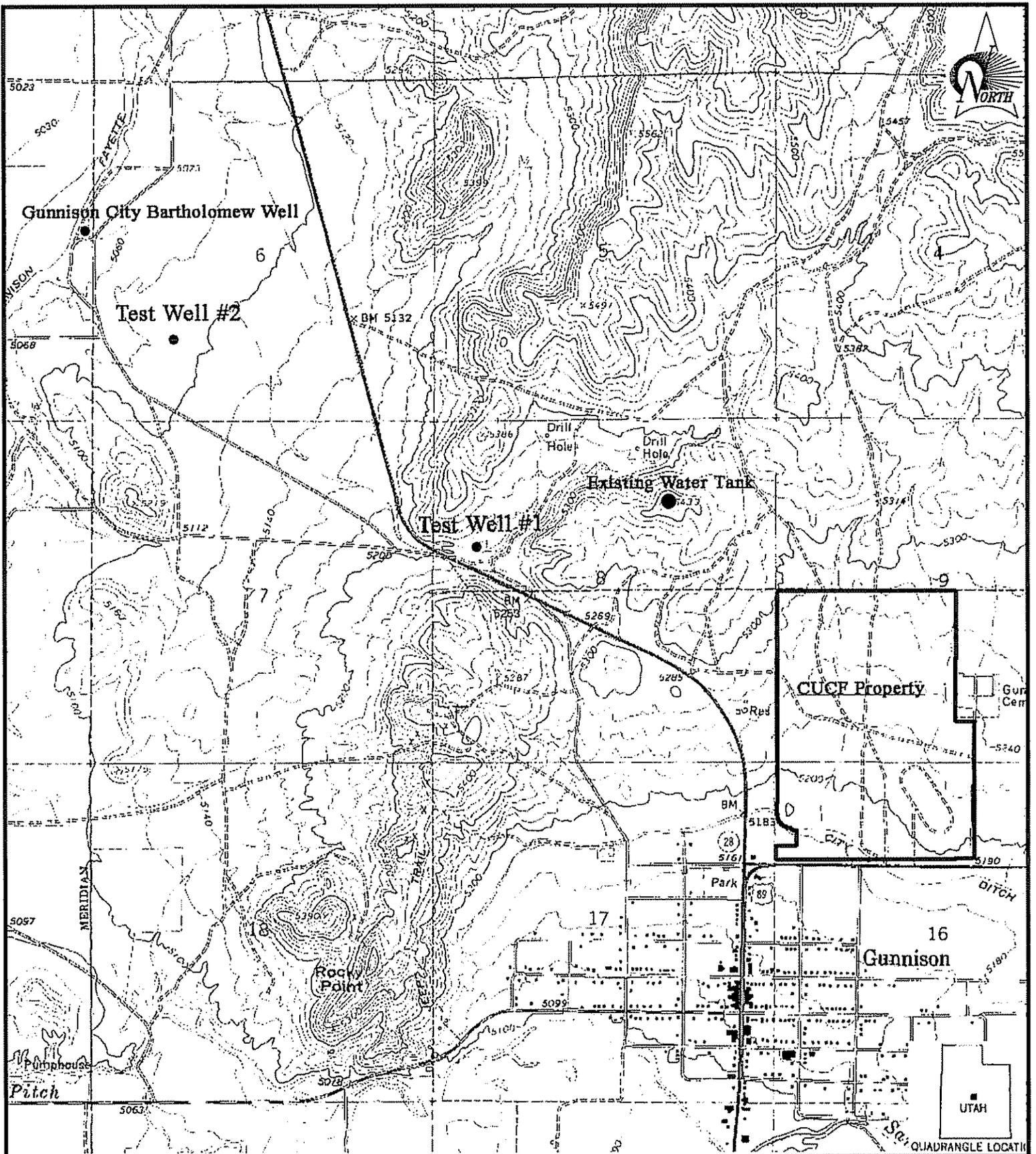


FIGURE 1. SITE VICINITY MAP
 Test Wells #1 and #2
 Gunnison, Utah

SUNRISE ENGINEERING, INC.
 CONSULTING ENGINEERS & LAND SURVEYORS

12027 South Business Park Drive, Suite 220 TEL (801) 523-0100
 Provo, UT 84601 FAX (801) 523-0000

Designed by: DY
 Checked by: VK
 Date: 9/30/05

Scale in Feet



SUNRISE
 ENGINEERING

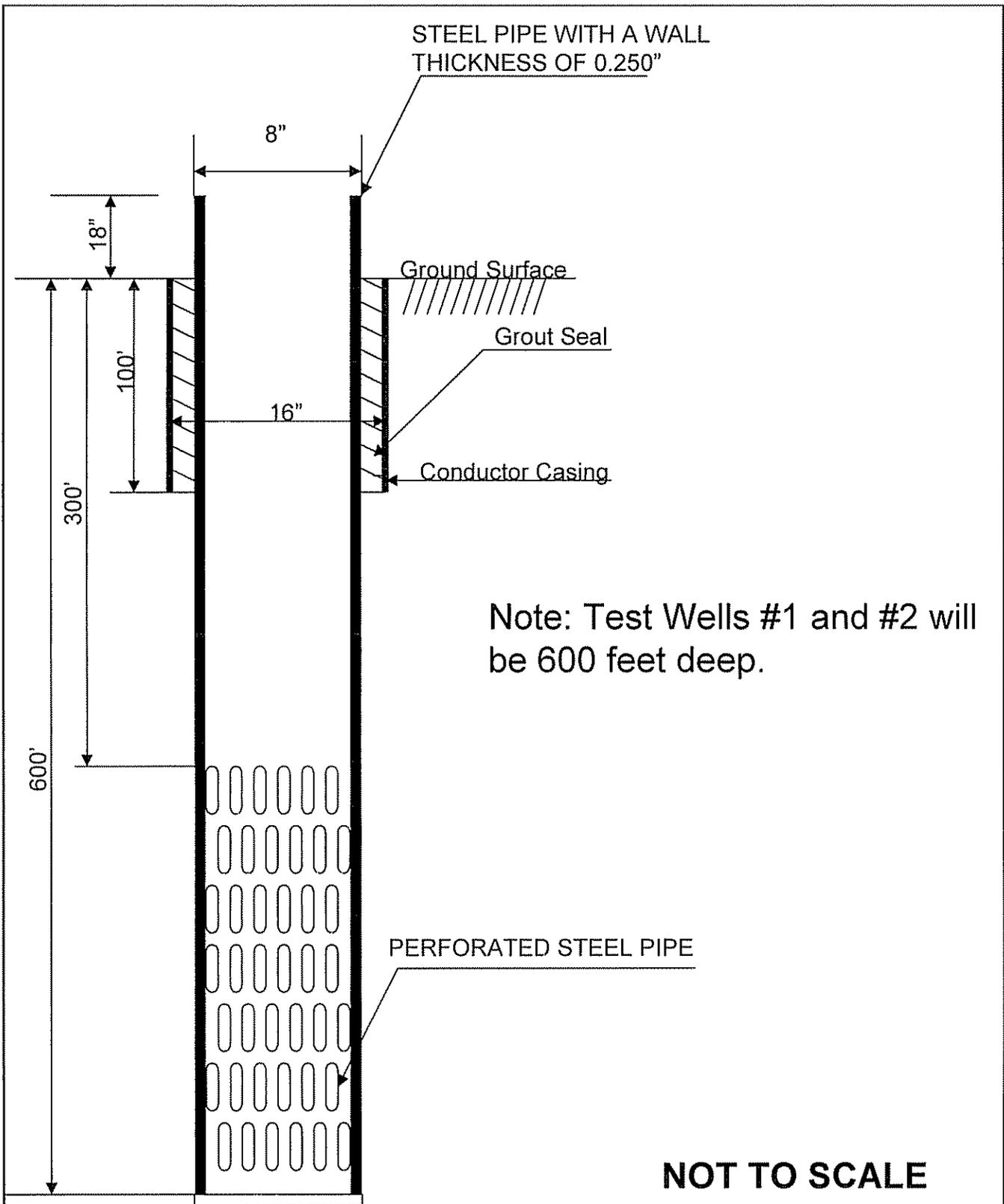


FIGURE 2. WELL DESIGN – CABLE TOOL DRILLING METHOD
 Test Wells #1 and #2

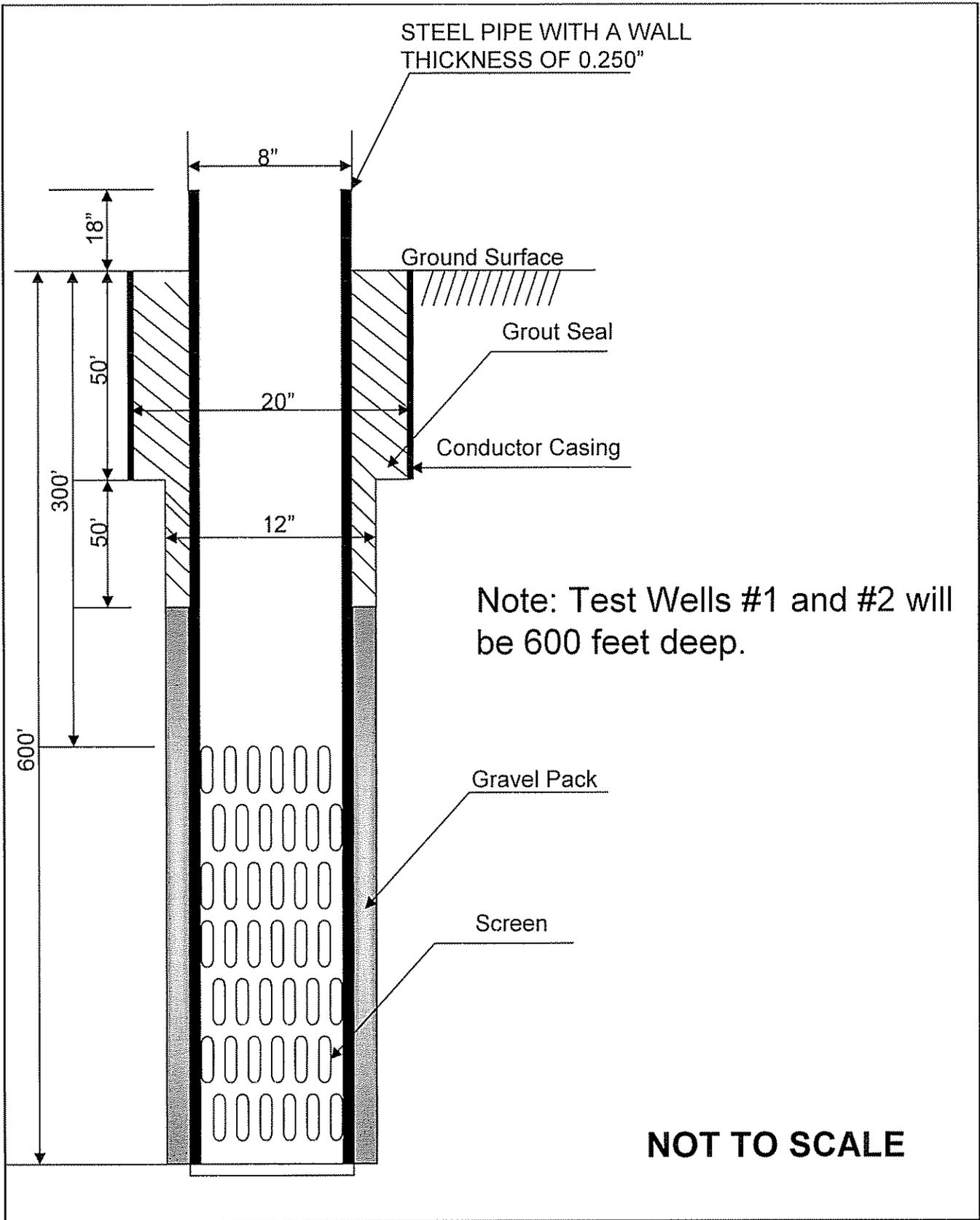


FIGURE 3. WELL DESIGN – ROTARY DRILLING METHOD
 Test Wells #1 and #2

DOCUMENT 00410
BID SCHEDULE

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

- A. Price schedules.

1.2 CONSTRUCTION CONTRACT

- A. State of Utah Department of Corrections Facilities Bureau Test Well Project – Test Wells #1 and #2.

PART 2 PRICE SCHEDULES

2.1 BASE BID

- A. Location: Both well sites are located on the land managed by the State of Utah School and Institutional Trust Lands Administration (SITLA), as shown in Figure 1.
- B. Base Bid: The following schedules constitute the base bid for one test well. The total price will be doubled if two wells are drilled.

Schedule 1: One Test Well – Cable Tool Drilling Method

The undersigned Bidder, having examined and determined the scope of the Contract Documents, hereby proposes to perform the work described herein for the following unit prices or lump sum amounts.

*Note: 1. Bids shall include sales tax and all other applicable taxes and fees
 2. All bids shall be checked for errors. If errors are made, unit prices shall govern and corrections will be made according to the unit price and totals will be revised to reflect the corrections.*

| No. | Meas. & Pmt. Reference | Item | Quantity | Unit | Unit Price | Amount |
|-----|------------------------|---|----------|------|------------|--------|
| 1 | 02000 | Mobilization | 1 | LS | | |
| 2 | SP13100 | 16" Conductor Casing Furnishing and Installing | 100 | LF | | |
| 3 | SP13110 | 8" Diameter Hole Drilling and Well Log Preparing | 500 | LF | | |
| 4 | SP13110 | 8" Diameter Casing Furnishing and Installation | 600 | LF | | |
| 5 | SP13110 | 8" Casing Perforation | 300 | LF | | |
| 6 | SP13110 | Furnish, Install and Remove Test Pump (500' deep) | 500 | LF | | |
| 7 | SP13110 | Well Development | 8 | HR | | |
| 8 | SP13110 | Test Pumping (Target Capacity 500 gpm) | 72 | HR | | |
| 9 | SP13110 | Conductor Casing Removal or Perforation | 100 | LF | | |
| 10 | SP13110 | Surface Seal Material and Installation | 100 | LF | | |
| 11 | SP13110 | Well Abandonment (Cap and Seal) | 1 | LS | | |
| 12 | SP13110 | Well Log Preparation | 1 | LS | | |

**TOTAL BID FOR
 ONE WELL**

**TOTAL BID FOR
 WELLS #1 & #2**

**DAYS REQUIRED TO
 COMPLETE ONE WELL**

**DAYS REQUIRED TO
 COMPLETE WELLS #1 & #2**

The undersigned Bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons bidding on the work.

Seal (if bid is by Corporation)

Respectfully Submitted:

Bidder: _____

Signature _____

Title: _____

License No. _____

Address: _____

Date: _____

Schedule 1A: One Test Well – Rotary Drilling Method

The undersigned Bidder, having examined and determined the scope of the Contract Documents, hereby proposes to perform the work described herein for the following unit prices or lump sum amounts.

*Note: 1. Bids shall include sales tax and all other applicable taxes and fees
 2. All bids shall be checked for errors. If errors are made, unit prices shall govern and corrections will be made according to the unit price and totals will be revised to reflect the corrections.*

| No. | Meas. & Pmt. Reference | Item | Quantity | Unit | Unit Price | Amount |
|-----|------------------------|---|----------|----------|------------|--------|
| 1 | 02000 | Mobilization | 1 | LS | | |
| 2 | SP13110 | 20” Conductor Casing Furnishing and Installing | 50 | LF | | |
| 3 | SP13110 | 12” Diameter Hole Drilling and Well Log Preparing | 550 | LF | | |
| 4 | SP13110 | Geophysical Logging | 1 | LS | | |
| 5 | SP13110 | 8” Diameter Casing Furnishing and Installation | 300 | LF | | |
| 6 | SP13110 | 8" Screen | 300 | LF | | |
| 7 | SP13110 | Tremie Pipe | 300 | LF | | |
| 8 | SP13110 | Gravel Pack Material and Placement | 10 | CUY D | | |
| 9 | SP13110 | Development Pumping (Rig Rate) | 8 | HR | | |
| 10 | SP13110 | Furnish, Install and Remove Test Pump (500' deep) | 500 | LF | | |
| 11 | SP13110 | Test Pumping (Target Capacity 500 gpm) | 72 | HR | | |
| 12 | SP13110 | Conductor casing removal or perforation | 50 | LF | | |
| 13 | SP13110 | Surface Seal Material and Installation | 100 | LF | | |
| 14 | SP13110 | Well Abandonment (Cap and Seal) | 1 | LS | | |
| 15 | SP13110 | Well Log Preparation | 1 | LS | | |

**TOTAL BID FOR
 ONE WELL**
**TOTAL BID FOR
 WELLS #1 & #2**
**DAYS REQUIRED TO
 COMPLETE ONE WELL**
**DAYS REQUIRED TO
 COMPLETE WELLS #1 & #2**

The undersigned Bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons bidding on the work.

Seal (if bid is by Corporation)

Respectfully Submitted:

Bidder: _____

Signature _____

Title: _____

License No. _____

Address: _____

Date: _____