

1988

James Constructors, Inc. v. Salt Lake City Corporation : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

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50 JAMES CONSTRUCTORS, INC.
.A10 880502
DOCKET NO. Plaintiff and Appellant,

vs.

SALT LAKE CITY CORPORATION,
Defendant and Respondent.

SALT LAKE CITY CORPORATION,
a municipal corporation of
the State of Utah,

Plaintiff,

vs.

JAMES CONSTRUCTORS, INC.,
a Nevada corporation, HOOD
CORPORATION, a California
corporation, and INDUSTRIAL
INDEMNITY COMPANY, a
California corporation,

Defendants.

Case No. 880502-CA
Priority No. 14(b)

BRIEF OF RESPONDENT

Appeal from a Final Judgment under Rule 54(b), Utah Rules of Civil
Procedure, of the Third Judicial District Court of Salt Lake
County, The Honorable David S. Young presiding.

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FILED

DEC 18 1983

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Plaintiff and Appellant,

vs.

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JURISDICTION

This Court has jurisdiction under Article VIII, Section 5, Utah Constitution, 78-2a-3(2)(j), Utah Code Annotated, and in conjunction with Rule 54(b), Utah Rules of Civil Procedure.

NATURE OF PROCEEDINGS

This case involves claims by both Salt Lake City Corporation ("SLCC") and James Constructors, Inc. ("James") relative to a public water pipeline construction contract. James' present appeal is from an Order dismissing James' Complaint, which Order was certified as a final order pursuant Rule 54(b), Utah Rules of Civil Procedure.

ISSUES ON APPEAL

1. Did the District Court Err in Dismissing James Constructors' Complaint for Extra Work Consisting of Claims for Delay, Construction Sequence Changes, Standby Time, Remedial Work and Lost Profits.

The first two issues presented by James in its brief relate to interpretation of the subject Contract regarding responsibility for bedding and backfill materials and inspection of the project. James has isolated its focus on these issues to the exclusion of the principal issues and contractual provisions pertinent to dismissal of the Complaint of James. This emphasis in James brief obfuscates the principal issues and diverts the Court's attention from those matters upon which dismissal of the Complaint was properly based.

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, RULES, ETC.

There are no constitutional provisions, statutes, or rules, whose interpretation is determinative of the issues on appeal.

STATEMENT OF THE CASE

Nature of the Case

This case involves a contract between SLCC and James for the construction of a public water pipeline construction project known as the Big Cottonwood Conduit Extension -Terminal Park Transmission Pipeline ("The Project"). SLCC and James both filed separate actions against each other, which actions were subsequently consolidated. Generally, SLCC seeks to recover in excess of \$2,000,000.00 for the costs of correcting defects in the work performed by James.

SLCC claims that James, inter alia, failed to properly bed and support the pipe, failed to remove oversized rocks, asphalt and other debris from the backfill which resulted in damage to the pipe, and failed to properly backfill and compact the trench. SLCC further contends that James' workers were instructed to conceal defective work from SLCC and to change its construction methods when SLCC personnel were on the jobsite. James contends that the defects were SLCC's responsibility and seeks in its Complaint to recover damages for "extras" consisting of delay, construction sequence changes, standby time, remedial work and lost profits.

Course of Proceedings and Disposition by Trial Court

On April 11, 1988, the District Court heard arguments on

SLCC's Motion for Partial Summary Judgment. SLCC requested the Court to enter partial summary judgment in favor of SLCC with respect to: (a) the Complaint of James' for alleged extra work claim consisting of alleged delay, standby time, construction sequence changes, and remedial work; and (b) the interpretation of certain contract clauses relating to James' defenses to SLCC's Complaint such as responsibility for bedding and backfill material and compaction of those materials. (R.616). On April 14, 1988, the District Court entered its Memorandum Decision granting SLCC's Motion on all the above issues. (R.828).

The entire claim alleged in the Complaint of James, which James terms as "extra work", consists solely of claims for delay, stand-by time, construction sequence changes, repair of defects in its work, and lost profits. (R.2; R. 1033; R. 573-609). The District Court ruled that James was not entitled to recovery on its extra work claim because there were no written extra work orders as required by the Contract. (R.954). In addition, the District Court separately addressed each of the items making up James' extra work claim, i.e., delay, stand-by time, construction sequence changes, repair of defects and lost profits, and ruled, independent of its ruling on the extra work issue, that James was not entitled to recover for any of these items under the Contract. (R. 954).

On May 4, 1988, the District Court Heard objections to the form of the Order of Partial Summary Judgment and also heard a Motion by James' that the Order be entered as a final judgment

pursuant to 54(b), Utah Rules of Civil Procedure. The form of the Order of Summary Judgment and Findings of fact and Conclusions of Law was determined by the Court and the Motion for Entry of Final Judgment under Rule 54(b) was granted. (R. 952).

On May 4, 1988, the District Court entered the Order for Partial Summary Judgment¹, (R. 952), and on May 17, 1988, the Court entered an Order of Final Judgment relative to the Partial Summary Judgment. (R. 962). James filed its Notice of Appeal on June 20, 1988 from that portion of the District Court's ruling dismissing the Complaint of James. (R. 996). James' submitted a separate Petition to the Supreme Court for Interlocutory Appeal on the issues of responsibility for bedding and backfill material, compaction of materials, and inspection of the project. This Petition was denied by the Supreme Court on July 27, 1988.

UNDISPUTED FACTS

Facts Presented to District Court²

On July 8, 1983, James Constructors, ("James"), contracted with SLCC to construct a public water pipeline along the East

¹ A duplicative Order of Partial Summary Judgment was subsequently entered with Findings of Fact and Conclusions of Law on June 1, 1988. (R. 972-982).

² These undisputed facts were presented to the District Court on SLCC's Motion for Partial Summary Judgment. (R. 513). James did not dispute or raise as genuine issues of material fact, by affidavit or otherwise, any of the following facts, (R. 654), which are, therefore, deemed admitted pursuant to Rule 3, Supplementary Rules of Practice for the Third Judicial District Court.

bench of Salt Lake City. (R. 538).³ During prosecution of the work by James on the Project SLCC discovered and notified James of defects in the project, including excessive settlement of the trench, and requested James to remedy these defects. (R. 513).

In March and April of 1984, SLCC notified James that it would be terminated from the Project if the defects were not corrected. James did not comply with the demand for corrections. (R. 513). On or about April 16, 1984, SLCC notified James that it was terminated from the Project inasmuch as the defects had not yet been corrected. (R. 513).

James' claim for \$526,843.08 is for work it considers as "extra work" consisting of delay damages, stand-by time, construction sequence changes and work repairing defects in the Project. (R. 2). James, however, was paid in full by SLCC for all written extra work orders issued on the Project.⁴ James bases its extra work claim solely upon claim letters submitted to SLCC after defects were discovered in James' work. (Exhibit "3"; R. 610).

\$427,601.23 of James' claim is for "delays", "construction sequence changes" and "standby time". (Exhibit "2", R. 583, 574). The remainder of the alleged claim is for repairs to the Project including settlement and sink holes in the trench and other

³ A copy of relevant portions of the subject contract are attached herewith as Exhibit "1" in the Addendum. The Exhibits in the Addendum are the exhibits presented by SLCC to the District Court.

⁴ Answers of James to SLCC's First Set of Interrogatories Nos. 64, 65, 66 and 67 attached herewith as Exhibit "3"; R. 610.

items, and for demobilization costs relative to James' termination from the Project. (Exhibit "2"; R. 573). The amount James claims for lost profits is included in the above amounts. (Exhibit "4", R. 612).

James' admits that the cost of completing the Project, had James remained on the job, cannot be determined and any attempt to determine such amount would "involve speculation". (Exhibit "4"; R. 612).

James contends that the failures and defects in the project resulted from bedding and backfill materials which it contends were unsuitable but were used by James throughout the Project to avoid the expense of imported material. (R. 614). James, on occasion, used import materials for bedding and backfill at James' expense. (Deposition of Jim Foreman, p. 51, 65-66, R. 1035; R. 634). James claims that the existing native soils it used as bedding and backfill were unsuitable and that it knew this before it used them. (Deposition of Jack Nielson, R. 1048; Deposition of Bill Erickson, R. 1047; R. 634). James was told by SLCC inspectors to dry the material if it was too wet or, in the alternative, to import materials. (Deposition of Bill Erickson, R. 1047; R. 634).

James Foreman, President of James, interpreted the specifications as not requiring existing materials. (Foreman Deposition, p. 40, R. 365; R. 634). James Foreman, President of James, stated that "if the material as prescribed by the specifications had been used, I don't feel the failures would

have existed". (Foreman Deposition, p. 40, R. 365; R. 634).

Response to James' Statement of Facts

James sets forth in its Statement of Facts, and throughout its Brief, numerous alleged facts without any reference to the record or source of admissible evidence. All such allegations should be disregarded by the Court. Dirks v. Goodwill, 81 Utah Adv. Rep. 30 (Ct.App. 1988). Additionally, many of James' statements of alleged facts throughout its Brief are inaccurate or incomplete representations of the deposition testimony referred to, are taken out of context, are not found in the deposition testimony referred to, or are otherwise inaccurate.

James' suggestion in its Statement of Facts that James was to backfill the trench and achieve backfill compaction as "ordered by the City" is misleading. The degree of compaction to be achieved was determined by the specifications. SLCC made random spot checks of the work performed by James. (Deposition of Evans T. Doxey, pp. 19-20, R. 363; R. 634). As discussed in the Argument, 96% compaction is what James was paid to perform and any inspections or tests by SLCC were for SLCC's benefit and did not relieve James of its obligation to perform.

James' statement that SLCC "insisted on James using native material" throughout the project is inaccurate and unsupported by the record. Bill Erickson, James' superintendent, testified in his deposition that James' was free to use import on the project. In fact, Erickson admitted that SLCC inspectors suggested several times that James use import material.

A He [Washburn] said that he had requested select backfill right at the beginning of the project, and the City had turned him down, wouldn't let him bring select backfill in.

Q At the City's expense, is that correct?

A Yes.

Q But if James wanted to use it, they could have-- you could have paid for it and used it; is that correct?

A Yes.

(Bill Erickson Deposition, p. 18, R. 1047)

Q Did anyone ever suggest to you that you import materials at your own expense ?

A Two inspectors, Milt Winward and Mark--I can't remember his last name--they suggested several times when I would complain about the material going back into the trench that we could import it if we wanted to at our own expense, that they weren't going to pay for it.

(Bill Erickson deposition, p. 36, R. 47).

James further states that compaction tests were taken by SLCC every 200 feet. In support of this allegation, James cites its own memorandum which refers to page 8 of the deposition of Milt Winward. (R. 654). No mention of this contention is found on Page 8 of Winward's deposition. (R. 361). However, Winward testified on page 28 of his deposition that he did not know how often compaction tests were taken and that someone else would have to be asked. (R. 361). SLCC inspections were on a random "spot check" basis. (Deposition of Evans T. Doxey, pp. 19-20, R. 363; R. 634).

James statement that Larry Allen drafted the specifications and calculated that 25,000 cubic yards of backfill material would

have to be imported is contrary to Allen's deposition testimony. Allen assisted Ron Rash, Allen's superior, in preparing the specifications. (R. 358). With respect to the amount of import which would be used, Allen stated at page 40 of his deposition:

Q Is it fair to say that you assume that import would be used on this project for backfill and bedding?

A That's a difficult question, because you never know. I wasn't there when the work was progressing. I'm not familiar with the soils, you know, what they actually encountered. And projects vary so much that, you know, some we do and some we don't.

(R.358).

SUMMARY OF ARGUMENT

The Complaint of James combines all of its claims together as a claim for "extras". (R. 2; R. 1033). The component parts of this claim consist of delay damages, stand-by time, construction sequence changes, repair of defects in James' work and lost profits. The Contract, however, provides that James is not entitled to recover damages or any payment for alleged delays or construction sequence changes but is only entitled to a time extension for excusable delay. The Contract also requires James to repair defects in the work at its own expense. Furthermore, James is not entitled to the extra work payments it seeks since it did not obtain from SLCC written extra work orders as required by the Contract.

James now asserts for the first time on appeal various theories in order to avoid the Contract provisions which preclude the claims against SLCC. The arguments now raised by James should not be considered on this appeal when they were not raised

before the District Court.

James also asserts, for the first time on appeal, that issues of fact exist relative to the damages James is entitled to recover in this matter. James did not dispute the facts upon which SLCC based its Motion and failed to raise any issue of fact when this matter was before the District Court and is precluded from attempting to do so now. (R. 654). Furthermore, no issue of fact exists relevant to the types of recovery sought by James in its Complaint or the provisions of the Contract which preclude such recovery.

James also raises other issues in its brief regarding interpretation of the Contract relative to responsibility for bedding and backfill materials, compaction of materials, inspection of the project, and responsibility for the work. The dismissal of the Complaint of James, however, was proper under the Contract provisions precluding the relief sought by James regardless of the disposition of the bedding/backfill issues. James' Petition for Permission for Interlocutory Appeal of these same issues has previously been denied by the Utah Supreme Court.

Furthermore, the backfill issues were properly decided by the District Court under Contract provisions placing upon James the responsibility for bedding, backfill, compaction and proper completion of the work. Performance of these responsibilities is what James agreed to do and what SLCC was paying James to do.

ARGUMENT

POINT I

THE CONTRACT PRECLUDES RECOVERY BY JAMES OF THE CLAIMS IN ITS COMPLAINT AND JAMES' COMPLAINT WAS PROPERLY DISMISSED AS A MATTER OF LAW.

James appeals only from the District Court's dismissal of James' Complaint. (R. 996; Docketing Statement). The District Court dismissed James' Complaint based upon two separate and independent grounds, (1) that the Contract precluded recovery by James of any of the individual items of recovery sought in James Complaint, and (2) the lack of written extra work orders required by the Contract for the amounts claimed by James. As discussed below, the District Court properly dismissed the Complaint of James on these grounds regardless of the issues now emphasized by James relative to backfill material and compaction.

A. James is not Entitled to any Recovery For any Delays, Downtime, or Other Hindrances in the Prosecution of the work.

The amounts claimed in the Complaint of James for delays, standby time, and construction sequence changes are not recoverable under the Contract⁵. The Contract provides that in

⁵ James' claim against SLCC is based upon the letters attached hereto as Exhibit "2". (R. 573). In the letter of March 7, 1984, James indicates that \$398,371.63 of the \$526,843.08 claimed is for "delays" and "construction sequence changes." (R. 574). In the letter of April 19, 1984, James adds another \$29,229.60 to its claim for "standby time" for a total sum of \$427,601.23 under this claim item. (R. 574-583).

The amount claimed by James for lost profits is included in the above amounts. (R. 612). James admits that the amount of any alleged lost profits cannot be determined and any attempt to determine such amount would "involve speculation". (Exhibit "4", R. 612). James, therefore, cannot recover for such speculative lost profits. Bastian v. King, 661 P.2d 953 (Utah 1983); Howard v. Ostergaard, 30 Utah 2d 183, 515 P.2d 442, 445 (1973).

the event of delay due to any cause, including delays caused by SLCC, James may be entitled to an extension of time to complete the work but in no case would be entitled to recover any monetary damages.

Section 5.06 of the Contract provides:

The Contractor shall not be entitled to any claim for damage on account of hindrance or delay from any cause whatsoever, but if it can be shown to have affected work on the critical path, Contractor shall be granted extensions of time for which liquidated damages will not be claimed by the City, for delays due to strikes, lockouts, war, fire, or acts of God.

(b) The Contractor shall, within forty-eight (48) hours from the beginning of any such delay, notify the City in writing of the delay and its cause, and request a specific period of contract time extension. In no event shall City be liable for or Contractor be entitled to any damages for any such delay. (Emphasis Added)

Such clauses are routinely enforced. Wells Brothers Company of New York v. United States, 245 U.S. 83, 65 L.ed. 148 (1920); Western Engineers, Inc. v. State Road Commission, 20 Utah 2d 294, 437 P.2d 216 (1968); Russell v. Bothwell & Swaner Co., 57 Utah 2d 363, 194 P. 1109 (1920); Corp. of Pres. of LDS v. Hartford Acc. & Ind. Co., 98 Utah 297, 95 P.2d 736 (1940).

The Utah Supreme Court has held that a time extension under such provisions is the contractor's exclusive remedy for delay:

This Court has previously held that when parties to a contract foresee the possibility of delay and provide therefor by extensions of time, it is to be presumed that the parties intended such prescribed remedy to be exclusive for such delay...

Western Engineers, Inc. v. State Road Commission, 20 Utah 2d 294, 437 P.2d 216, 217 n.2 (1968).

James' claim for delays due to "construction sequence changes for the convenience of the City" is expressly precluded by Section 101.09(b) of the Contract:

The Owner reserves the right to determine the sequence of construction which may be most opportune to the Owner.

See also Section 101.07.

Section 2.13(c) provides that the City may direct the contractor to coordinate the work with other contractors:

If the performance of the Contractor is likely to be interfered with by the simultaneous execution of some other contract or contracts, the Engineer may decide which contractors shall cease work temporarily and which contractor shall continue, or whether the construction under all contracts can be coordinated so that all contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the performance or attempted performance of any other contract or contracts.

It is well established that a contractor cannot recover any damages for delay under contract provisions such as these which provide that the contractor perform the work in the sequence required or directed by the owner. McDaniel v. Ashton-Mardian Co., 357 F.2d 511 (9th Cir. 1966); Southern Fireproofing Co. v. R. F. Ball Const. Co., 334 F.2d 122 (8th Cir. 1964); DePuy v. Lone Star Dredging Co., 162 S.W. 161 (Texas 1942).

SLCC cannot be held liable for damages for the exercise of rights expressly granted under the contract even if its actions

did cause some delay or downtime to James. McDaniel v. Ashton-Mardian Co., 357 F.2d 511 (9th Cir. 1966). James, therefore, cannot recover any of the \$427,601.23 claimed for "delay", "construction sequence changes", or "stand-by" time.

B. James is not Entitled to Payment From SLCC for Unapproved Extra Work.

James characterizes the entire amount alleged in its Complaint as "Extras". As discussed above, the vast majority of the claim is precluded under Contract provisions relating to delays. Each of the other components of James' claim are similarly precluded by various Contract provisions as discussed elsewhere in this brief. In addition to these provisions, the Contract provides that payment for "extra work" may only be made when there is a written order for such work. This requirement coincides with Utah Code Ann., Section 63-56-1 (1953 as amended) which precludes payment for extra work on public projects without a written extra work order. James admits that there are no written extra work orders on this Project for which James has not been paid in full by SLCC. (Exhibit "3", R. 610)

Notwithstanding the absence of written extra work orders, James submitted a claim to SLCC, after discovery of the defective work performed by James, in the amount of \$526,843.08 for extra work. (R. 2; R. 573-609). James bases the amount of this claim solely upon claim letters from James to SLCC dated in March and April of 1984 and attached hereto as Exhibit "2". (R. 573). James relies upon no written extra work orders or any other

invoices, records or documents in establishing the amount of this claim. (Exhibit "3"; R. 610).

Section 6.02 of the General Provisions provides:

No extra work shall be performed or paid for without a written order for such work.

Article 10 of the Contract further provides that:

It is understood and agreed by the parties hereto that no money will be paid to the contractor for any new or additional labor or materials furnished, as defined in Section GP 6.02, unless a new contract or a modification hereof for such additional materials or labor has been made in writing and executed by City and Contractor.

Section 2.10(c) further provides that "... any extra work done without written authority, will be considered as unauthorized and no payment will be made therefor." James obtained no approval for the payments it seeks and did not make such claim until after its defective work was discovered. James, therefore, is not entitled to payment under its claim for extra work without "a written order for such work" authorizing such payment.

It is well established that such provisions are enforceable and the contractor is not entitled to any extra work payments unless such extra work was the subject of a written extra work order. Anno. 1 ALR 3d 1273, 1279; See also Campbell Building Company v. State Road Commission, 95 Utah 242, 70 P.2d 857 (1937); Owens v. City of Bartlett Labette County, 215 Kan. 840, 528 P.2d 1235, 1239 (1974); 13 Am. Jur. 2d 24, Building Etc. Contracts, Section 122.

In Darrell J. Didericksen & Sons v. Magna Water, 613 P.2d 1116 (Utah 1980), the Utah Supreme Court held that similar

contract language "...placed the onus upon the Contractor to obtain change orders or proceed further at its own risk." Id. at 1118.

In Huber and Roland Construction Co. v. City of South Salt Lake, 7 Utah 2d 273, 323 P.2d 258 (1958), the contractor made extra work claims on a project to remove a sidewalk and install a new one. The Court rejected the claim for extra work based upon a contract provision "that there shall be no extra work beyond that set forth in the contract unless authorized in writing by the engineer in charge." Id. at 259; See also Campbell Building Company v. State Road Commission, 95 Utah 242, 70 P.2d 857 (1937); Owens v. City of Bartlett Labette County, 215 Kan. 840, 528 P.2d 1235, 1239 (1974); 13 Am.Jur.2d 24, Building, Etc. Contracts, Section 122.

In W & O Construction Company, Inc. v. City of Smithville, 557 S.W.2d 920 (Tenn. 1977), the Court rejected a contractor's claim for extra work where there was no written order for such work. The court stated that even though the city was aware that the contractor was performing the extra work and the contractor had notified the City of such, there could be no payment to the contractor for extra work in the absence of a written agreement or authorization for such additional compensation.

The absence of written extra work orders, therefore, precludes any recovery by James on its extra work claim and sustains the dismissal of James' Complaint.

C. The Contract Required James to Repair Defects in the Project, Including Settlement of Backfill, Damage to Utilities, and Damaged Pipe at its Own Expense and Without any Additional Compensation From SLCC.

James extra work claim includes \$92,698.97 for repairs of defects in its work on the Project including excessive settlement, "sink holes" in the trench, repair of utilities damaged by James and other items. (Exhibit "2", R. 573). The Contract, however, required James to make such corrections and repairs at its own expense. James, therefore, is not entitled to such recovery.

Section 4.08 of the General Provisions provides that:

...until the formal acceptance of the work by the city, the contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the acts of God or the elements or from any other cause. The Contractor shall rebuild, repair and restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof. (Emphasis Added)

Section 2.10 of the General Provisions provides:

a. All work which the Engineer deems defective in its construction or deficient shall be remedied or removed and replaced by the Contractor in a manner acceptable to City, and no compensation will be allowed for such correction. (Emphasis Added)

b. Upon failure of the contractor to promptly remove defective or unauthorized work following notification of the noncompliance by Engineer, the Engineer shall have authority to cause defective work to be remedied, or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any moneys due or to become due to the Contractor.

Section 2.07(d) further provides:

Any inferior or imperfect work or materials as determined by the Engineer, that may be discovered before or after the completion and acceptance of the herein proposed work shall be corrected immediately at

the contractor's sole expense upon notification by the Engineer.

Section 190.04 of the Contract Specifications, places on James the responsibility for repairing excessive settlement of backfill:

(b) Replacement of earth fill or backfill, where it has settled below the required finish elevations, shall be considered as a part of such required repair work. . .

(c) The Contractor shall make all repairs and replacements promptly upon receipt of written order from the owner. If the Contractor fails to make such repairs or replacements promptly, the Owner reserves the right to do the work and the Contractor and his surety may be liable to the Owner for the cost thereof.
(Emphasis Added)

The Contract further places on James the responsibility of determining the existence and exact location of any underground utilities or improvements along the Project in order to avoid damaging the same and to repair said underground utilities damaged during construction. Section 4.20(a) of the Specifications provides:

It shall be the Contractor's responsibility to ascertain the existence and locations of any underground improvements or facilities which may be subject to damage by reason of Contractor's operations.

Section 160.04 further provides:

In the event any utilities, service connections, or other improvements are damaged, they shall be repaired at no additional expense to the Owner.

These sections place on James the responsibility to perform remedial work at its own expense. This is a responsibility the Contract placed upon the contractor for which the contractor would include amounts in its bid to compensate for such

obligation. James, therefore, is not entitled to recover for these items.

D. The Theories Raised by James to Avoid the Contractual Requirement of Written Extra Work Orders are Raised for the First Time on this Appeal and are Inappropriate for Review by this Court.

James presents, for the first time in its appeal, various theories such as independent contract, modification, rescission, estoppel, and waiver in an attempt to avoid the written extra work order requirement of the Contract. James further asserts, for the first time on appeal, that issues of fact exist relative to these issues. James has not raised or argued these issues at any time prior to this appeal. (R.2; R.654). In a related interlocutory appeal in this same case, this Court has stated:

It is axiomatic that matters not presented to the trial court may not be raised for the first time on appeal.

Salt Lake City Corp. v. James Constructors, Inc., 90 Utah Adv. Rep. 62 (Ct.App. 1988); See also, Wheeler v. Mann, 86 Utah Adv. Rep. 3 (June 30, 1988).

In Bundy v. Century Equipment Co., 692 P.2d 754 (Utah 1984), this Court stated:

Orderly procedure, whose proper purpose is the final settlement of controversies, requires that a party must present his entire case and his theory or theories of recovery to the trial court; and having done so, he cannot thereafter change to some different theory and thus attempt to keep in motion a merry-go-round of litigation.

Id. at 758 (Quoting Simpson v. General Motors Corp., 24 Utah 2d 301, 303 470 P.2d 399, 401 (1970)). James did not present to the

trial court any of the theories now asserted to circumvent the Contract's requirement of written extra work orders. (R. 2; R. 654). These issues are raised for the first time on this appeal and are not properly before this Court.

E. No Material Issue of Fact Exists as to the Dismissal of James Complaint.

James argues, in Point III of its Brief, that issues of fact exist relative to the recovery, if any, to which James is entitled. James, however, made no showing before the District Court which would suggest the existence of any issue of fact relative to dismissal of James Complaint. (R.654). In fact, James did not even argue or contend that any such issue of fact existed. (R.654).

In Franklin Financial v. New Empire Develop. Co., 659 P.2d 1040 (Utah 1983), the Utah Supreme Court held:

The opponent of the motion, once a prima facie case for summary judgment has been made, must file responsive affidavits raising factual issues, or risk the trial court's conclusion that there are no factual issues.

Thus, when a party opposes a properly supported motion for summary judgment and fails to file any responsive affidavits or other evidentiary materials allowed by Rule 56(e), the trial court may properly conclude that there are no genuine issues of fact unless the face of the movant's affidavit affirmatively discloses the existence of such an issue. Without such a showing, the Court need only decide whether, on the basis of the applicable law, the moving party is entitled to judgment.

Id. at 1044 (Citations omitted). James failed to raise any issue of material fact before the District Court and is precluded from doing so now for the first time on appeal. Salt Lake City Corp.

v. James Constructors, Inc., 90 Utah Adv. Rep. 62 (Ct.App. 1988).

The only factual matters relevant to dismissal of James' Complaint are the types of recovery sought by James in its Complaint and the existence of the Contract provisions which expressly preclude recovery for each of those items. No dispute exists as to these matters and dismissal of James' Complaint was proper as a matter of law.

POINT II

THE COMPLAINT OF JAMES WAS PROPERLY DISMISSED AS A MATTER OF LAW REGARDLESS OF WHICH PARTY WAS RESPONSIBLE FOR BEDDING AND BACKFILL MATERIALS AND COMPACTION OF THOSE MATERIALS.

The main thrust of arguments in James' Brief involves the interpretation of the subject Contract relative to responsibility for furnishing backfill and bedding material and compaction of these materials. While these issues were properly decided by the District Court, James Complaint was properly dismissed independent of these issues for the reasons set forth above. These issues were not the basis for dismissal of James' Complaint but went to certain defenses of James to SLCC's Complaint. These same issues were the subject of James' Petition for Interlocutory Appeal, which petition was denied by the Utah Supreme Court.

Rule 3, Rules of the Utah Supreme Court, requires that the Notice of Appeal "designate the judgment or order, or part thereof, appealed from...."⁶ James' Notice of Appeal designates

⁶ The Notice of Appeal was originally for appeal to the Utah Supreme Court prior to transfer to this Court which has identical requirements in its own Rule 3.

only that part of the District Court's Order of Partial Summary Judgment "dismissing plaintiff's complaint against Salt Lake City...." James further affirms, on page 4 of its Docketing Statement, that "[t]his appeal is only by James Constructors, Inc. in its action against Salt Lake City Corporation...."

The District Court properly dismissed the Complaint of James regardless of the disposition of the issues relative to responsibility for bedding, backfill and compaction. The dismissal of James' claims against SLCC was correct based upon the Contract provisions relative to extra work, delays, construction sequence changes, stand-by time, and upon James' characterization of its profits as speculative. James' Brief only briefly addresses these issues and diverts attention from the principal basis for dismissal of the Complaint by emphasizing unrelated issues regarding backfill material and compaction. In any event, SLCC submits that the District Court's ruling on these matters was proper and should not be disturbed.

POINT III

JAMES WAS REQUIRED TO SELECT AND PROVIDE BEDDING AND BACKFILL MATERIALS AS NECESSARY TO COMPLY WITH THE REQUIREMENTS OF THE SPECIFICATIONS, INCLUDING IMPORT MATERIALS IF NECESSARY.

The Contract provides that James was responsible to furnish, and was paid to furnish, the bedding and backfill material, whether native or imported materials, and that such materials were to be suitable for construction within the Specifications.

A. James was Required to Provide for Bedding, Backfill, and Imported Materials and Payment for Such Materials was Included in Payment for Installation of the Pipe.

Section 3.01 of the Contract provides that James was responsible to furnish the materials on the Project which would yield a result in conformance with the Specifications.

The Contractor shall furnish all materials required to complete the work Only materials conforming to the requirements of the specifications shall be incorporated in the work. (Emphasis added)

Addendum 1, Part 2, Section 195.01 of the Contract specifically provides that SLCC was not responsible for the bedding and backfill for the Project.

(b) All materials will be furnished by the owner except for the following: concrete, reinforcing steel, ladders, bedding, backfill, surface restoration and erosion control items.... (Emphasis Added).

Furthermore, Section 201.04(c)(1) provides:

[i]mported select backfill shall be included in payment for installation of the pipe.

Sections 195.02(a) and 195.02(b) of Addendum 1 both include the following provision that payment for installation of the pipe includes payment for "bedding, backfill" and for "imported backfill".

Payment per lineal foot of pipe shall be full compensation for.... Also included in payment per lineal foot of pipe shall be all materials and installation of unclassified excavation, bedding, backfill, imported backfill, removal and disposal of waste material... (Emphasis Added).

Only an artificial and unrealistic reading of these contract provisions would support the argument that SLCC was responsible to furnish what James was being paid to furnish.

B. James' Reliance on Contract Sections 195.02(dd) and 195.02(ee) is misplaced.

James relies upon Contract Sections 195.02(dd) and 195.02(ee) in Addendum I in contending that SLCC was responsible for bedding and backfill material and making additional payments for imported materials used in all cases. These Contract sections provide, however, for only limited instances where SLCC would pay James for import materials in addition to payment for pipe installation.

Sections 195.02(dd) - (ee) in Addendum I provide that SLCC could, for whatever reason, require James to use imported materials where James would not otherwise use them regardless of whether the native materials were suitable. For example, if the contractor was working in a busy intersection, SLCC may decide that it did not want to leave trenches open for the time it took the contractor to dry wet materials, separate oversized rocks out of the backfill, or otherwise perform the required selection process. The provisions for payment for import allowed SLCC to address this type of contingency, should it arise, in a manner fair to the Contractor. (See Deposition of Ken Karren, p. 53-54, R. 1050).

James was free to use either selected native materials or imported materials so long as what was used resulted in sufficient compaction and compliance with the specifications. However, under the payment provisions for import, SLCC was able to require import materials and take this choice away from James. In consideration for this right, SLCC agreed under these limited

circumstances to pay for such material in addition to payment for pipe installation, something it was not otherwise obligated to do since payment for whatever backfill material was used was included in payment for pipe installation.

C. James, and Not SLCC, was Responsible for Providing and Bedding, Backfill and Imported Materials which would Result in Comformance with the Specifications._

James contends, notwithstanding the Contract provisions discussed above, that the contract somehow makes SLCC responsible for selecting the bedding and backfill materials used by James. James bases this contention on isolated language in Sections 201.03(c)(1) and 201.04(c)(1) giving the SLCC engineer the option to choose bedding material and to determine whether materials selected by James from the excavation were suitable. James apparently contends that in the event the engineer did not exercise its authority, James was free to use unsuitable material, which it claims it did. This argument ignores the language of the Contract discussed above and other relevant Contract provisions.

Section 140.02(b) of the Specifications provides:

The presence of the engineer or any inspector(s), however, shall not relieve the contractor of the responsibility for the proper execution of the work in accordance with all requirements of the Contract Documents. Compliance is a duty of the contractor, and said duty shall not be avoided by any act or omission on the part of the engineer or any inspector(s).
(Emphasis Added)

Section 140.05 (a) of the Specifications provides in pertinent part:

If the engineer or inspector, through an oversight or otherwise, has accepted materials or work which is defective or which is contrary to the specifications, such material, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected by the engineer for the owner.

James was required to provide and select the bedding and backfill on the project. If James used native materials for bedding, it was required to use "selected granular material obtained from the excavation". Section 201.03(c)(1), (Emphasis Added). This required that James select and separate out from the excavated materials those materials which would be suitable for use as bedding material or import substitutes. All this work was to be done at the contractor's expense. Section 201.03(c)(1).

Similarly, if James used native materials for backfill, it was required to select suitable materials from the material excavated. Section 201.04(c)(1). James, as the party responsible for such materials, was responsible for this selection process and had exclusive control over which materials it would select and which it would not. This selection process included removing oversized rocks and drying the selected material to optimum moisture content before use as backfill. Section 201.04. If, however, such native material could not be selected and worked suitably, then James was required to use imported materials. Payment for laying the pipe included payment for such imported backfill materials. Section 201.04(c)(1).

In addition to its obligations expressed in the Contract,

James had the responsibility to use bedding and backfill materials which would meet contract specifications, Corbetta Construction Co. v. Lake County Public Building Commission, 64 Ill. App.3d 313, 381 N.E.2d 758 (1978), and to perform the work in a reasonably prudent and workmanlike manner. Morin Building Products Company, v. Baseton Construction, 717 F.2d 413 (1983).

James was required to follow the specifications, Mayor v. City Council, Etc. v. Clark-Dietz, Etc, 550 F.Supp. 610 (N.D. Miss. 1982), which if it did, James admits that the project failures would not have occurred. (Foreman Deposition, p. 40., R. 365). James was required to use suitable materials and was not free to use any unsuitable materials regardless of any act or omission of SLCC or its representatives.

D. Neither SLCC nor the Specifications Required that Only Native Materials be Used and SLCC Did Not Warrant the Suitability of Native Materials.

James contends that SLCC impliedly warranted that the native materials obtained from the excavation were suitable for bedding and backfill. This contention, however, is based upon the erroneous premise that the Contract required the contractor to exclusively use only materials that existed in the excavation. This was not the case under the Contract as discussed above. James itself stated that the Specifications did not require use of existing materials for backfill, (Foreman Deposition, p. 40, R. 365), and James actually did use imported materials. (Depositions of James Foreman, p. 51, 65-66, R. 1035; Bill

Erickson deposition, p. 34-35, R. 1047).

As discussed above, Sections 201.03(c)(1) and 201.04(c)(1) required that James use either "selected" material from the excavation or imported material. The Contract did not allow for use of unselected native material from the excavation. James was not free to use whatever it took out of the trench. James was required to perform a selective process. If such selective process did not result in suitable material, or if James opted not to deal with the selection process, the Contract required James to import material, payment for which imported material was included in payment for installation of the pipe. Section 201.04(c)(1).

James' implied warranty of specifications argument, and the cases cited in James' Brief, are further based upon the erroneous premise that the contractor actually followed the specifications. James Foreman, president of James, stated that James did not follow the specifications relative to bedding and backfill material. He stated on page 40 of his deposition:

[I]f the material as prescribed by the specifications had been used, I don't feel the failures would have existed.

(R. 365; R. 634). The cases cited by James deal with defects in the specifications themselves. The issue in this case is not whether the specifications were defective, (R. 2), but rather whether James performed the work it contracted to do within the specifications.

James agreed to furnish, and was paid to furnish, the

bedding and backfill material for the Project, whether it be material taken out of the trench excavation or imported from other sources, and such materials were to be suitable for construction within the Specifications. No reasonable construction of the Contract can place responsibility on SLCC for materials James was paid to furnish on the project. The District Court's ruling on this issue, therefore, if considered on this appeal, should be affirmed.

POINT IV

JAMES' OBLIGATION TO CONSTRUCT THE PIPELINE IN CONFORMANCE WITH THE CONTRACT SPECIFICATIONS WAS NOT MODIFIED, WAIVED OR RELIEVED BY ANY RIGHT TO INSPECT OR ANY ACT OR OMISSION OF SLCC'S ENGINEER, INSPECTORS OR REPRESENTATIVES.

James contends in its brief that it is not responsible for any defects in the Project due to SLCC's alleged failure to properly inspect the work performed by James, and that failure by SLCC to discover James' defective workmanship, including compaction, during the course of construction relieves James of responsibility for those defects. (R. 2; R. 180). In short, James contends it is not responsible for its defective work because SLCC did not discover the defective work while it was being performed. As discussed below, these issues were correctly decided in favor of SLCC. This Court, however, need not reach these issues on appeal since the Complaint was properly dismissed regardless of the disposition of these contentions of James.

James agreed to construct the Project with workmanship and materials which would result in strict compliance with the

Specifications. Corbetta Construction Co. v. Lake County Public Building Commission, 64 Ill. App.3d 313, 381 N.E.2d 758 (1978). James also had a duty to perform the work in a reasonably prudent and workmanlike manner. Morin Building Products Company, v. Baseton Construction, 717 F.2d 413 (1983); Republic Court v. Procedeysne Corp., 401 F.Supp 1061, 1069 (S.D.N.Y. 1975); Sims v. Oakwood Homes, Inc., 217 S.E.2d 737, 737,739 (N.C. 1975).

The Contract clearly provides that James' responsibility for construction of the pipeline within the Specifications was unaffected by any alleged act or omission of SLCC's engineer or inspectors. Section 2.07 (d) of the Contract provides:

It is hereby agreed that the inspection by the engineer shall not relieve the contractor of contractor's responsibility to furnish materials and workmanship in accordance with the specifications. (Emphasis Added)

James contends that under Section 201.06 of the Contract, SLCC was required to conduct certain tests to determine if James was doing what it was paid to do and that it is somehow relieved of responsibility for defects in the project it was hired to construct. James claims that SLCC, and not James itself, was responsible to make sure James was doing what it was paid to do. When the Contract is read in light of all of its provisions and interpreted to give effect to all parts of the Contract, Jones v. Hinkle, 611 P.2d 733 (Utah 1980), it is clear that 201.06 does not obligate SLCC to perform testing but merely prescribes the manner in which any compaction tests, taken at SLCC's option, would be performed.

Section 140.02(b), which is also in the Technical Provisions

and therefore on equal footing with Section 201.06, provides:

The presence of the engineer or any inspector(s), however, shall not relieve the contractor of the responsibility for the proper execution of the work in accordance with all requirements of the Contract Documents. Compliance is a duty of the contractor, and said duty shall not be avoided by any act or omission on the part of the engineer or any inspector(s).
(Emphasis Added)

When Section 201.06 is read in light of this language, the only consistent interpretation rejects James' contention that 201.06 obligates SLCC to test or inspect James' work and that James is relieved of its obligations if testing is not performed.

Similar contract language was considered in City of Wahpeton v. Drake-Henne, Inc., 215 N.W.2d 897 (N.D. 1974). In that case the plaintiff city sued the contractor and surety on an underground sewer and water pipeline project for damages resulting from settlement of backfill on the project. In that case, compaction tests were taken by representatives of the city, and the city had executed a certificate of final completion and acceptance. The contractor argued, as does James in this case, that the city was estopped from claiming defective work because the city's inspectors knew or should have known of such defects.

The court rejected the contractor's contention in view of contract provisions substantially the same as those in this case. The court affirmed that the performance or omission of compaction tests and acceptance of the work did not affect the contractor's duty to perform the work in conformance with the specifications. The court further held that deficient compaction was a latent defect, even though the city had been doing compaction tests, and

that the contractor was responsible for any settlement of the backfill occurring within one year of completion under a one-year guaranty clause substantially similar to the guaranty clause involved in this case. Section 4.18.

The Contract further provides that SLCC owed no duty to James' to inspect the work to ensure compliance with the Specifications. Section 2.19 (a) of the Contract provides:

Neither engineer's authority to act under this article or elsewhere in the contract documents nor any decision made by engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of engineer to contractor . . . or any other person performing any of the work.

Inspection of the Project by SLCC was purely optional and at the sole discretion of SLCC, its Engineer and inspectors. Section 2.07 of the Contract further provides that inspection by the engineer or his assistants was purely at the convenience of the engineer.

James contends that the Contract provisions relating to "inspection" do not apply to "testing" and that SLCC was responsible to assure proper performance by James through compaction tests by inspectors. James submits that inspection somehow does not relate to testing by inspectors. Several courts, however, have held that inspection and testing are synonymous. People v. Floom, 368 N.E.2d 410 (1977 Ill.App.); Kucker v. Sunlight Oil & Gasoline Co., 79 A. 747 (Pa 1911).

The terms inspect and inspection are in common use and have well defined and generally understood meanings.

Inspection is not necessarily confined to optical observation, but is ordinarily understood to embrace

tests and examinations.

O'Hare v. Peacock Dairies, 79 P.2d 433, 438 (Calif. 1938). The Contract provisions relating to inspections apply equally to any compaction tests performed by inspectors.

Furthermore, under Work in the Public Way, page RW-8 of the Contract provides that "testing" by SLCC was optional:

The Engineer has the option to perform any laboratory and field testing to assure compliance with City specifications.

Section 140.04 of the Contract provides that the engineer may waive any testing or inspection and that any such waiver does not release the contractor of its obligation to perform its work within the Specifications.

Any waiver of any specific testing or other quality assurance measures whether or not such waiver is accompanied by a guarantee of substantial performance as a relief from the specified testing or other quality assurance requirements as originally specified, and whether or not such guarantee is accompanied by a performance bond to assure execution of any necessary corrective or remedial work, shall not be construed as a waiver of any technical or qualitative requirements of the specifications.

Section 140.05 (a) of the Specifications provides in pertinent part:

If the engineer or inspector, through an oversight or otherwise, has accepted materials or work which is defective or which is contrary to the specifications, such material, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected by the engineer for the owner.

Section 4.11 of the Contract provides:

No inspection by the engineer or an inspector, no payment of money, acceptance of part or all of the work by City or its agents shall operate as a waiver of any provision of the Contract.

Section 2.08 of the Contract further provides that James, and not SLCC or its agents, was responsible for the manner of performing the work in meeting specification requirements.

(a) The Inspector shall in no case act as foreman or perform other duties for the contractor or interfere with the management of the work by the latter. Any advice which the inspector may give the contractor shall not be construed as binding on the engineer in any way or in any way releasing the contractor from fulfilling all of the terms of the contract.

The above provisions plainly manifest that James' responsibility for the work and materials on the Project was unaffected by any alleged improper or deficient inspection by SLCC. The Contract provisions allowing for inspection and testing were solely for SLCC's own convenience and benefit, Epperly v. City of Seattle, 399 P.2d 591 (Wash. 1965); City of Durham v. Reidsville Engineering Company, 255 N.C. 98, 120 S.E.2d 564 (1961), and do not relieve James from its responsibility to ensure that the work and materials used were in conformance with the Specifications.

In Fortec Constructors v. United States, 760 F.2d 1288 (Fed.Cir. 1985), the plaintiff contractor was required to remove, at its own expense, substantial amounts of concrete and to replace improperly placed rebar. The contractor claimed, just as James does in this case, that the government was estopped from imposing the costs of such remedial work on the contractor since government inspectors had inspected the work during the two month period when the rebar was improperly placed. The Court, however, rejected the contractor's claim in view of contract provisions

similar to those above that any government inspection of the project would not relieve the contractor of its responsibility to perform within the specifications. Id. at 1291-92.

In City of Durham v. Reidsville Engineering Company, 255 N.C. 98, 120 S.E.2d 564 (1961), the Court addressed a similar situation. In that case the plaintiff city sought to recover from the contractor the costs of correcting defective work. The defendants argued that the city was estopped from maintaining the action because the work had been certified by the supervising engineers and accepted by the city. The Court rejected the contractor's claim and awarded the damages sought by the city based upon contract language which provided:

Inspection of the work at any time shall not relieve the party of the first part [the construction company] of any obligation to do sound and reliable work; and ... that any omission to disapprove of any work by the engineer... shall not be construed to be an acceptance of any imperfect, unsightly or defective work.

The Court further stated that the provisions allowing inspection of the project by City inspectors were "for the benefit and protection of the city" and that the responsibility of the proper completion of the job remains on the contractor.

SLCC owed no duty to James to inspect or test James' work. James was required to perform the work within the Specifications regardless of whether or not SLCC inspected or tested compaction on the Project. James accepted the responsibility to construct the pipeline within the specifications, including achieving 96% compaction of backfill, when it contracted to perform the work.

Compliance with the Specifications is what James was hired and paid to do as the general contractor and such responsibility was in no way affected by any SLCC inspection or lack thereof. James's contention that it is exonerated from any responsibility for its own defective work because SLCC did not make sure it was doing what it was paid to do flies in the face of the Contract provisions and common sense.

POINT V

EXTRINSIC OR PAROL EVIDENCE IS NOT A PROPER CONSIDERATION IN DETERMINING THE MEANING OF THE CONTRACT BETWEEN SLCC AND JAMES.

James contends, again for the first time on appeal, that the Contract provisions relating to backfill and compaction are ambiguous, that the Contract was not integrated, and that the District Court erred in failing to consider alleged extrinsic facts in interpreting these provisions. As discussed above, James is precluded from raising these new theories on appeal when it failed to present these issues to the District Court. Salt Lake City Corp. v. James Constructors, Inc., 90 Utah Adv. Rep. 62 (Ct.App. 1988).

The cardinal rule in determining the meaning of a contract is that the Court must first attempt to determine the intent of the parties from the text of the contract itself. LDS Hospital v. Capitol Life Insurance Co., 94 Utah Adv.Rep. 16 (October 31, 1988). The Court must look first to the contract itself and exclude any extrinsic evidence. Land v. Land, 605 P.2d 1248

(Utah 1980).

The primary rule in interpreting a contract is to determine what the parties intended by looking at the entire contract and all of its parts in relation to each other, giving an objective and reasonable construction to the contract as a whole.

Western Surety Company v. Murphy, 83 Utah Adv.Rep. 26, 28 (Utah App. May 25, 1988) (Quoting Sears v. Riemersma, 655 P.2d 1105, 1107-08 (Utah 1982)).

The Court's inquiry in determining the meaning of the contract should be to the contract document in its entirety, Atlas Corp. v. Clovis Nat. Bank, 737 P.2d 225 (Utah 1982), viewing all of its provisions together, Sears v. Riemersma, 655 P.2d 1105 (Utah 1982), and interpret the contract so as to give effect to all of its provisions. Larrabee v. Royal Dairy Products Co., 614 P.2d 160 (Utah 1980); Jones v. Hinkle, 611 P.2d 733 (Utah 1980).

James seeks to have the Court consider an array of immaterial and inaccurate factual allegations which confuse the issues and divert attention from the plain language of the Contract itself. James now contends that the Contract is ambiguous although it argued in the District Court that the Contract meaning was clear. The Contract between James and SLCC is sufficiently clear, when considered as a whole, to enable interpretation of its provisions without resort to extrinsic evidence.

Furthermore, whether a contract is ambiguous and the resolution of any such ambiguities are questions of law which may

be resolved by the Court through summary judgment.

[O]ur decisions hold that whether a contract is ambiguous is a question of law which the Court must decide before it takes any evidence in clarification.

More importantly, our more recent cases hold that even the resolution of contract ambiguities is a question of law for the Court.

Morris v. Mountain States Tel. & Tel. Co., 658 P.2d 1199, 1200 (Utah 1983). The District Court was free to determine, as a matter of law, whether the Contract was ambiguous and, if so, to resolve such ambiguities as a matter of law without resort to extrinsic evidence.

James also attempts to raise issues relating to conversations and meetings held prior to bidding the project and prior to the Contract between James and SLCC. Such matters, however, are superceded by the Contract itself.

All preliminary negotiations, conversations, and verbal agreements are merged into and superceded by the subsequent contract, and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms cannot be altered by parol evidence.

Lamb v. Bangart, 525 P.2d 602, 607 (Utah 1974).

James claims that the Contract is not integrated because of provisions for subsequent written modifications in the form of change orders or extra work orders. In determining whether a Contract was intended as an integration, the Utah Supreme Court has stated:

In deciding upon this intent, the chief and most satisfactory index for the judge is found in the circumstances whether or not the particular element of the alleged extrinsic negotiation is dealt with at all in the writing. If it is mentioned, covered or dealt

Alexander v. Brown, 646 P.2d 692, 694 (Utah 1982). The present Contract fully and completely cover the matters of bedding, backfill, imported backfill, compaction and inspection of the project. There exists no indication that the voluminous Contract in this case was not intended to be an integration, particularly as to the terms and issues raised by James.

The Court should enforce the provisions of the Contract according to the plain meaning of its language, Pugh v. Stockdale & Co., 570 P.2d 1027 (Utah 1977); Commercial Building Corp. v. Blair, 565 P.2d 776 (Utah 1977), Sec v. White & Co., Inc., 546 F.2d 789 (8th Cir. 1976), which language clearly establishes the basis for the District Court's ruling on the issues presented in SLCC's Motion for Partial Summary Judgment.

POINT VI

JAMES APPEAL SHOULD BE DISMISSED FOR FAILURE TO TIMELY FILE ITS NOTICE OF APPEAL AND FOR LACK OF JURISDICTION OF THE COURT.

On April 13, 1988, the District Court entered its Memorandum Decision granting SLCC's Motion for Partial Summary Judgment. On May 4, 1988, the District Court heard James' objections to the form of the Order of Partial Summary Judgment proposed by SLCC. On May 4, 1988, the District Court signed and entered the Order of Partial Summary Judgment. (R. 952).

Also on May 4, 1988, James requested that the Order of Partial Summary Judgment, in the form determined by the District Court on that date, be entered as a final judgment pursuant to

Court on that date, be entered as a final judgment pursuant to Rule 54(b), Utah Rules of Civil Procedure. (R. 951). The District Court granted James' motion and, on May 17, 1988, entered its Order for Entry of Rule 54(b) Final Judgment relative to the Order of Partial Summary Judgment. (R. 962).

Rule 4, Rules of the Utah Supreme Court,⁷ requires that the Notice of Appeal be filed "within 30 days after the date of entry of the judgment or order appealed from...." This requirement for filing within 30 days is a jurisdictional requirement.

It is axiomatic in this jurisdiction that failure to timely perfect an appeal is a jurisdictional failure requiring dismissal of the appeal.

Prowswood, Inc. v. Mountain Fuel Supply Co., 676 P.2d 952 (Utah 1984). James appeals from the final judgment entered on May 17, 1988. The 30 days for filing the Notice of Appeal expired on June 16, 1988. James, however, did not file its Notice of Appeal until June 21, 1988. James' appeal, therefore, should be dismissed as untimely and without jurisdiction.

The untimeliness of the Notice of Appeal is unaffected by the duplicative Order entered June 1, 1988. This Order was filed in connection with Findings of Fact and Conclusions of Law which are not necessary to support the Order entered May 4, 1988. Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered, 681 P.2d 1258 (Utah 1984). Furthermore, several courts have consistently held that the time for appeal runs from

⁷ This appeal was originally before the Supreme Court of the State of Utah. Rule 4 of the Utah Court of Appeals contains the same requirement.

the date of the Rule 54(b) certification.

When a district court certifies a claim for immediate appeal under Rule 54(b), the time for taking the appeal begins to run on the date of certification.

Federal Deposit Insurance Corp. v. Tripathi, 769 F.2d 507, 508 (8th Cir. 1985); Abex Corp. v. Ski's Enterprises, Inc., 748 F.2d 513 (1984); Page v. Preisser, 585 F.2d 336 (8th Cir. 1978); Dyer v. MacDougall, 201 F.2d 265, 267 (2nd Cir. 1952); Dennis v. Southeastern Kansas Gas Co., Inc., 227 Kan. 872, 610 P.2d 627 (1980).

James' time for filing its Notice of Appeal commenced on May 17, 1988 when the Final Order was entered, and expired on June 16, 1988. James' Notice of Appeal filed June 21, 1988, therefore, is untimely and the appeal should be dismissed for lack of jurisdiction.

CONCLUSION

The Complaint of James was properly dismissed under the Contract provisions expressly precluding recovery for each of the items for which James made a claim. The Contract precluded James' claims for delay, stand-by time, construction sequence changes and extra work. These items make up the entire claim of James and, therefore, the Complaint was properly dismissed.

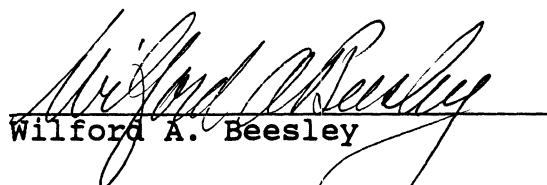
The issues regarding responsibility for bedding, backfill, compaction and proper performance of the work do not impact the Contract provisions relating to James' claims and dismissal of the Complaint. Even if such issues were pertinent to dismissal

of the Complaint, the District Court properly decided these issues in favor of SLCC. James was responsible to properly perform the work it was hired and paid to do.

SLCC, therefore, respectfully requests that the Order of Partial Summary Judgment be affirmed.

Dated this 13th day of December, 1988.

BEESLEY & FAIRLCOUGH



Wilford A. Beesley



Stanford P. Fitts

CERTIFICATE OF SERVICE

I certify that I caused four true and correct copies of the foregoing to be Hand Delivered to the following this 13th day of December, 1988:

Bryce E. Roe, Esq.
FABIAN & CLENDENNIN
215 South State Street, Suite 1200
Salt Lake City, Utah 84111

Jay Jensen, Esq.
Elwood P. Powell, Esq.
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ARMSTRONG, RAWLINGS & WEST
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175 South Main Street
Salt Lake City, Utah 84111

Max D. Wheeler, Esq
David W. Slaughter, Esq.
Robert C. Keller, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145

A handwritten signature in black ink, appearing to read "David W. Slaughter", is written over a horizontal line.

ADDENDUM

EXHIBIT 1

RECORDER'S 82C-162

CONSTRUCTION OF
BIG COTTONWOOD CONDUIT EXTENSION
TERMINAL/PARK TRANSMISSION PIPELINE

FOR

SALT LAKE CITY CORPORATION
SALT LAKE CITY, UTAH

VOLUME 1
CONTRACT DOCUMENTS AND SPECIFICATIONS

APRIL 1983

11

82C-16

ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS, SPECIFICATIONS, AND DRAWINGS
FOR CONSTRUCTION OF
BIG COTTONWOOD CONDUIT EXTENSION
TERMINAL/PARK TRANSMISSION PIPELINE
FOR
SALT LAKE CITY CORPORATION
SALT LAKE CITY, UTAH

1. The Owner has elected to furnish a majority of the materials for this project. Changes to these bid documents resulting from this decision will be the Contractor's responsibility.
2. Specifications, Section 195, "Measurement and Payment": Replace section as follows:

195.01 GENERAL

(a) Measurement and calculation of quantities for payment will be as specified in this section. Unit prices or lump sum amounts bid shall include full compensation for furnishing all materials, labor, tools, equipment, and doing all work shown on the drawings, defined in the specifications, and/or stipulated herein.

(b) All materials will be furnished by the Owner except for the following: concrete, reinforcing steel, ladders, bedding, backfill, surface restoration and erosion control items, wall thimbles, all electric wiring, connectors, conduits, lighting fixtures and receptacles, floor drains, frames and covers, manhole rings and covers, redwood baffle assembly, and weir plates with anchor bolts.

(c) Most materials furnished by Owner will be stored at Owner's shops at 1530 South West Temple, Salt Lake City, Utah, except large-diameter pipe, which will be delivered to site. Contractor will be responsible for transporting all materials to construction site and protecting them from vandalism or theft.

(d) Owner will bid out pipeline materials concurrent with installation contract and will make awards based upon their own criteria.

195.02 DESCRIPTION OF BID ITEMS

Bid items that appear in the Price Schedules are further defined and described as follows:

(a) PIPE - PAVED AREAS (Bid Items 1 through 6): Measurement for piping will be based on actual field measurements of lineal feet of pipe installed, excluding structures and outlet stubs, which shall be included in payment as part of the structure. No deduction will be made for fittings. Payment for piping will be at the unit bid price per lineal foot for the size and class of pipe specified. Payment per lineal foot of pipe shall be full compensation for the installation of

pipeline materials including bends, tees, outlets, reducers, buttstrap connections, and other fittings as specified and shown on the drawings. Also included in payment per lineal foot of pipe shall be all materials and installation of unclassified excavation, bedding, backfill, imported backfill, removal and disposal of waste material, and all surface restoration including untreated base course, asphalt paving, restriping of paved areas, waterways, monuments, restoration of all water, sprinkler, storm drains, sewers relocated or adjusted, or other utilities damaged as a result of the Contractor's operations. Payment shall also be full compensation for all connections to other pipelines as shown on the drawings, thrust restraining, restraining collars, thrust blocking, insulated flanges, polywrapping, bonding, pressure testing, disinfection, and draining the line.

(b) PIPE - UNPAVED AREAS (Bid Items 7 through 10): Measurement for piping will be based on actual field measurements of lineal feet of pipe installed, excluding structures and outlet stubs, which shall be included in payment as part of the structure. No deduction will be made for fittings. Payment for piping will be at the unit bid price per lineal foot for the size and class of pipe specified. Payment per lineal foot of pipe shall be full compensation for the installation of pipeline materials including bends, tees, outlets, reducers, buttstrap connections, and other fittings as specified and shown on the drawings. Also included in payment per lineal foot of pipe shall be all materials and installation of unclassified excavation, bedding, backfill, imported backfill, removal and disposal of waste material, and all surface restoration including untreated base course, asphalt paving, restriping of paved areas, waterways, monuments, restoration of all water, sprinkler, storm drains, sewers relocated or adjusted, or other utilities damaged as a result of the Contractor's operations. Payment shall also be full compensation for all connections to other pipelines as shown on the drawings, thrust restraining, restraining collars, thrust blocking, insulated flanges, polywrapping, bonding, pressure testing, disinfection, and draining the line.

(c) VALVE STRUCTURES AND PIPELINE CONNECTIONS AT 500 SOUTH (Bid Item 11): Payment for this item will be at the lump sum bid price. Payment shall be full compensation for furnishing the materials noted in Paragraph 195.01(b) and constructing the valve structures, 30-inch connection and brick conduit connection at 500 South and Guardsman Way, as specified and shown on the drawings, including but not limited to excavation, backfill, reinforced concrete boxes, piping (including all 30-inch and the 24-inch connection piping between structures and 36-inch future stub-out), butterfly valves, tapered plug valve, air vacuum/air release valves, plug valves, ball valves, electrical system, electrical motors, electro-hydraulic actuator, fittings, couplings, manhole rings and covers, access hatches, blowoffs, stand pipes, ladders, pipe supports, stem extensions, and other appurtenances necessary to complete the work.

(d) VALVE STRUCTURE AT 1300 SOUTH AND 2100 EAST (Bid Item 12): Payment for the valve structure will be at the lump sum bid price for the valve structure. Payment shall be full compensation for furnishing the materials noted in Paragraph 195.01(b) and constructing the valve

than the project site, the Contractor will be required to furnish evidence that the stockpiled materials are irrevocably obligated to the project and secured from any loss, damage or theft.

Payment for materials shall not constitute acceptance of any materials which do not conform to the specifications.

No partial payment will be made on living, or perishable plant materials until planted.

The contractor shall be responsible for any damages or loss to the materials until the material is incorporated into the work and accepted by the City.

ARTICLE 7. SALES TAXES. The City is exempt from sales taxes on property sold directly to it. Therefore, City reserves the right for any equipment or materials (exceeding \$500 in value) to be ordered by Contractor for use hereunder, to require that the City be billed directly therefor by the supplier, after issuance of City purchase order, at Contractor's net cost less any applicable discounts. The City cost for such equipment or material less an amount equal to the sales tax which would otherwise be applicable, if any, shall be deducted from sums due Contractor hereunder.

ARTICLE 8. INDEBTEDNESS. Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the work have been paid or that arrangements have been made for their payment. Payment will be made without unnecessary delay after receipt of such evidence as mentioned above and final acceptance of the work by the City.

ARTICLE 9. SCHEDULE OF WAGES. On state or federally funded projects, the Contractor shall pay the applicable wage rate specified, if any.

ARTICLE 10. ADDITIONAL WORK. It is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished, as defined in Section GP 6.02, unless a new contract or a modification hereof for such additional materials or labor has been made in writing and executed by City and Contractor. The City specifically reserves the right to modify or amend this contract and the total sum due hereunder, either by enlarging or restricting the scope of the work.

ARTICLE 11. ACCEPTANCE. The work will be inspected for acceptance by the Engineer within a reasonable time upon receipt of notice from the Contractor that the work is complete and ready for inspection.

The following information will be provided by phone (535-7785) or in person at the field engineer's office. Permit number, name and telephone number of permittee, date/time work is to commence, location of work, and any other information which may be important to the construction work such as special traffic control features, etc.

- f. Time limit: Unless authorized otherwise by the Engineer on the permit, all paving and replacement of street facilities shall be done in conformance with the regulations contained herein within seven (7) calendar days from the time the excavation commences, or within three (3) calendar days on major or collector streets and five (5) calendar days on all other streets from the time excavation is backfilled whichever is less, except as provided for during excavation in winter. If work is expected to exceed the above duration, the permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.
- g. Submittals: In regards to all trench backfilling and surface restoration materials, submit, at the engineer's request, the name of the approved City material suppliers or provide laboratory tests certifying the material to be installed under permit is within the City's specification limits.
- h. Testing: The Engineer has the option to perform any required laboratory field testing to assure compliance with City specifications. The Engineer will advise the permittee of tests which are to be conducted. The Engineer shall back charge the permittee for testing performed should any

testing reveal noncompliance with City specification. The back charge rate shall be the cost to conduct the test plus 15% for engineering administrative costs.

The Engineer shall not back charge permittee if the testing confirms compliance with City specifications.

5. PROTECTION OF PUBLIC DURING CONSTRUCTION

- a. Conformance to existing laws: The permittee shall be responsible to be fully informed of all Federal, State and local laws, ordinances, rules and regulations which, in any manner, affect the work, and at all times shall observe and comply with such laws, ordinances, rules and regulations.
- b. Traffic interruption: Construction operations will be conducted in a manner that a minimum amount of interference or interruption of roadway traffic will result. Except during emergency conditions or unless authorized by the Engineer, construction operations such as excavation, backfill and pavement restoration on major/collector and CBD streets are prohibited during the peak traffic hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.
- c. Traffic barricade manual: All provisions of the current "Traffic Barricade Manual" of Salt Lake City will be adhered to. This manual provides regulations concerning traffic control, construction barricades, road closure public and private access, traffic control signing, traffic control in Central Business Area and traffic control devices.

2.05 Superintendence: Before starting work the Contractor shall designate in writing a representative who shall have the authority to act for the Contractor.

a. When the Contractor is comprised of two (2) or more persons, firms, partnerships or corporations functioning on a joint-venture basis, said Contractor, before starting work, shall designate in writing the name of a representative who shall have the authority to act for the Contractor at all times while work is actually in progress on the contract.

b. Whenever the Contractor or his authorized representative is not present on any part of the work where the Engineer may desire to give direction, such direction may be given by the Engineer, which shall be received and obeyed by the superintendent, foreman or employee who may have charge of the particular work in reference to which the orders are given.

c. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

d. Any order given to the Contractor by the Engineer will be in writing.

2.06 Lines and Grades: All work shall be done to the true line and grade, as shown by the line and grade stakes set by the City. The Contractor must protect line and grade stakes and will be held responsible for any defective work occasioned by his negligence in this regard. Any stakes destroyed by the Contractor will be replaced only at his expense.

2.07 Inspection:

a. All work and materials, and the manufacture and preparation of such materials from the beginning of the construction until the final completion and acceptance of the herein proposed work shall be subject to the inspection and rejection by the Engineer at such times as may suit Engineer's convenience. As soon as the materials have been inspected and tested, the Contractor shall immediately remove all rejected materials from the work, and to such a point distance therefrom as the Engineer may require. The Contractor shall furnish, at Contractor's own expense, such labor as may be required to enable a thorough inspection and culling of all materials, and upon request, shall furnish the Engineer samples of materials, as proposed to be used, in sufficient amounts as required to make proper tests.

b. The Engineer may assign such assistants as he may deem necessary to inspect the materials to be furnished and the work to be done under this contract and to see that the same strictly conforms to the specification herein set forth.

c. The Contractor shall make application for an inspector at least twenty-four (24) hours before the inspector's services are required.

d. Any inferior or imperfect work or materials, as determined by the Engineer, that may be discovered before or after the completion and acceptance of the herein proposed work shall be corrected immediately at Contractor's sole expense upon notification by the Engineer. It is hereby agreed that the inspection by the Engineer shall not relieve the Contractor of Contractor's responsibility to furnish materials and workmanship in accordance with the specifications. The failure or neglect on the part of said Engineer or his designee to condemn or reject inferior materials or work shall not be construed to imply an acceptance of the same should their inferiority become evident at any time prior or subsequent to the final acceptance of the work but prior to expiration of the guarantee period specified in Section 4.18 hereof.

e. The Contractor, Contractor's Superintendent and Foreman shall promptly obey and follow every order or direction which shall be given by the Engineer or Engineer's designated representative in accordance with the terms of the contract.

f. The inspectors shall at all times be free to perform their duties, and any intimidation of any inspector on the part of the Contractor or Contractor's agents or employees shall be sufficient reason, for the Engineer to recommend to the Mayor the cancellation or termination of the contract.

g. Any construction work done by the Contractor within a State Highway or within a County road of Salt Lake County, shall conform to the then applicable requirements as set forth by the State or County for such work.

h. Projects financed in whole or in part with State or Federal funds shall be subject to the requirements of the agency concerned, and such agency shall have the right to inspect the project at any time.

2.08 Authority and Duties of Inspectors: Inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter,

or waive any requirements of the specifications. The inspector is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the specifications and contract. Inspector shall have authority to reject materials or suspend the work until any question at issue can be referred to and decided by the Engineer.

a. The Inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the work by the latter. Any advice which the Inspector may give the Contractor shall not be construed as binding on the Engineer in any way, or in any way releasing the Contractor from fulfilling all of the terms of the contract.

b. If the Contractor refuses to suspend operations on verbal order, the Inspector shall issue a written order giving the reason for shutting down the work. After placing the order in hands of the person in charge, any work done will not be accepted.

2.09 Drawings and Specifications at the Site: When work is in progress, the Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, reviewed Shop Drawings, Extra Work Orders, and other modifications, in good order and marked to record all changes made during construction. These shall be available to the Engineer, at all times. The Drawings, marked to record all changes made during construction, shall be delivered to and reviewed by the Engineer before final payment will be made.

2.10 Removal of Defective and Unauthorized Work:

a. All work which the Engineer deems defective in its construction or deficient shall be remedied, or removed and replaced by the Contractor in a manner acceptable to City, and no compensation will be allowed for such correction.

b. Upon failure of the Contractor to promptly remove defective or unauthorized work following notification of non-compliance by Engineer, the Engineer shall have authority to cause defective work to be remedied, or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any monies due or to become due the Contractor.

c. Any work done beyond the lines and grades shown on the plans, or established by the Engineer, or any extra work done without written authority, will be considered as unauthorized and no payment will be made therefor.

2.11 Equipment: Equipment not suitable to produce the quality of work required will not be permitted to operate on the project. The Contractor shall provide adequate and suitable equipment to meet the work requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the work. No equipment or machinery shall be operated upon or over paved streets, sidewalks, landscaped or paved areas or prepared roadway shoulders in getting to, from, or in working on this project, which in the opinion of the Engineer may be injurious to said areas.

2.12 Assistance by Contractor:

a. The Contractor, at his sole cost, shall furnish the Engineer and/or Engineer's assistants with any labor required and necessary for the thorough inspection, culling over, or removing defective materials, or for thorough examination into any of the work, or for any other purpose required in the discharge of their respective duties.

b. At the request of the Engineer, the Contractor at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, shall be paid for as Extra Work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing and replacing of the covering or replacing the parts removed, will be at the Contractor's expense.

2.13 Coordination with Related Work:

a. The Contractor may at times find its work adjacent to and possibly interfacing with the work of other contractors who are under separate contract with the City, or its agencies. Every effort must be made to coordinate the work to leave a complete and finished work at the completion of the Contract. Such work and coordination shall be without additional cost to the City.

b. If any part of the Contractor's work depends for proper execution or results upon the completed work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any apparent discrepancies or defects in such work that render it unsuitable for proper execution and results. Failure of the Contractor so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive or be integrated with Contractor's work, and

Contractor shall make such changes at his cost as are necessary to integrate or receive Contractor's work.

c. If the performance of the Contractor is likely to be interfered with by the simultaneous execution of some other contract or contracts, the Engineer may decide which contractors shall cease work temporarily and which contractor shall continue, or whether the construction under all contracts can be coordinated so that all contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the performance or attempted performance of any other contract or contracts.

2.14 Acceptance of Prior Work: Contractor guarantees that Contractor's work hereunder will be properly executed in relation to prior work and shall carefully inspect this prior work and notify the Engineer in writing of any defects, improper workmanship or materials or other conditions that would affect the satisfactory execution and permanency of the Contractor's work. No further work shall be executed until all such defects or conditions have been corrected or an agreement reached regarding defects which may develop due to the conditions so noted. The absence of any such notification will be construed as an acceptance by Contractor, these trades or Subcontractors of all prior related work, and later claims of defects in this work will not in any way relieve Contractor, these trades or Subcontractors from responsibility for correcting their work, unless specifically stated otherwise under a section of the Specification for a certain trade.

2.15 Work Per Manufacturer's Directions: All manufactured articles, materials, or equipment, shall be applied, installed, connected, erected, used, cleaned, and conditioned as per manufacturer's printed directions, unless specified in writing to the contrary by the Engineer.

2.16 Character of Workmen: Contractor shall employ suitable and competent workmen for every kind of work. If any Subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or disobedient manner to the Engineer, the person(s) shall be immediately removed from the project upon the request of the Engineer, and such person shall not be employed again on the work.

2.17 Cleanup and Shutdown:

a. The Contractor shall keep the construction area reasonably clean at all times and shall remove accumulated debris

each day. At the end of each portion of the work, Contractor shall remove all debris, excess materials, tools and equipment, temporary buildings and barricades, etc., from the construction site and shall clean all areas, used in the performance of work under this contract.

b. Any trash, mud, or debris dropped or deposited on or in public ways, places or facilities from Contractors work shall be cleaned up pursuant to Section 5-5-20 of City Ordinances, within a reasonable time to be designated by Engineer in writing. If not, the City reserves the right to do the work and charge the Contractor for all such costs, which shall be deducted from sums owed the Contractor.

2.18 Final Inspection: Whenever the work provided and contemplated by the contract has been satisfactorily completed and the final cleaning up performed, the Engineer will make the final inspection.

2.19 Limitation of Engineers Responsibility:

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

b. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to undertake responsibility contrary to the provisions of paragraphs (c) or (d).

c. Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform the work in accordance with the Contract Documents.

d. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the site or otherwise performing any of the work.

3.00 Control of Materials:

3.01 Source of Supply and Quality of Material: The Contractor shall furnish all materials required to complete the work except materials that are designated in the special provisions to be furnished by the City and in accordance with Section 6.03, Force Account Payment. Only materials conforming to the requirements of the specifications shall be incorporated in the work. The materials furnished and used shall be new, except as may be provided elsewhere in these specifications, on the plans or in the special provisions. The materials shall be manufactured, handled and used in a workmanlike manner to insure completed work in accordance with the plans and specifications. The Contractor shall furnish without charge such samples as may be required. Inspection and tests will be made by the Engineer or his designated representative. Inspections and tests made at any point other than the point of incorporation in the work in no way shall be considered as a guarantee of acceptance of such material, or of a continued acceptance of material presumed to be similar to that upon which such inspections and tests have been made.

a. Manufacturer's warranties, guarantees, instruction sheets and parts lists which are furnished with certain articles or materials incorporated in the work shall be delivered to the Engineer before acceptance of the work and final payment is made. Three copies of instruction sheets and parts list shall be furnished the Engineer, prior to installation of materials and equipment.

b. Reports and records of inspection made and tests performed when available at the site of the work may be examined by the Contractor.

3.02 City Furnished Materials:

a. Materials furnished by the City will be available at locations designated in the special provisions, or if not, they will be delivered by City to the project. Otherwise, they shall be transported to the site of the work by the Contractor at his expense, including any necessary loading and unloading which may be involved. The cost of handling and/or relocating City furnished material on the site also shall be at Contractor's expense.

b. After delivery to the Contractor, the Contractor shall be held responsible for all materials furnished, and Contractor shall pay all demurrage and storage charges. City furnished materials or equipment lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor shall be liable to the City for the cost of replacing City furnished

a. No roadway shall be closed to parking or traffic, without a twenty-four (24) hour notice to and written approval of the Engineer.

b. Residents or businesses along the road or street shall be provided passage as far as practicable. Convenient access to driveways, houses, and buildings along the road or street shall be maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time without the approval of the Engineer.

c. It shall be the Contractor's responsibility to notify the Engineer, the Traffic Engineer, and the fire and police departments at least twenty-four (24) hours in advance of when any roadway will be closed or opened.

d. The Contractor shall meet all requirements set forth in the current edition of the Salt Lake City Traffic Barricade Manual. If a traffic control plan is provided in the contract documents, the Contractor shall meet all requirements set forth on that plan.

e. The Contractor shall furnish and maintain such fences, barriers, lights, signs and flagmen as are necessary, under State or local law, to protect and give adequate warning to the public at all times that the project is under construction and of any dangerous conditions to be encountered as a result thereof.

4.07 Responsibility for Damage: City, its officers, employees and agents, and the Engineer and his employees and agents shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof; for any material or equipment used in performing the work; for injury to property and/or person or persons; for damage to property; or for damage to adjoining property for any cause whatsoever during the progress of the work or at any time before City's final acceptance.

4.08 Contractor's Responsibility for Work: Except as provided above, until the formal acceptance of the work by the City, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the acts of God or the elements or from any other cause. The Contractor shall rebuild, repair and restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

4.09 Safety: Contractor shall institute a safety program at the start of construction to minimize accidents. Such program

shall continue to end of job and conform to the latest general safety orders of the State Industrial Commission, as contained in the then current Utah Occupational Safety and Health Act. The manual of Accident Prevention in Construction may be used as a guideline for safety practices. The presence on the job site of an inspector or other persons representing the City shall not in any way be construed to limit the Contractor's full responsibility hereunder for safety of all persons on the premises.

4.10 Contractor Not an Agent of City: The City's right of general supervision shall not make the Contractor, its agents or subcontractors, agents of the City. The liability of the Contractor for all damages to persons or to public or private property, arising from the Contractor's execution of the work, shall not be diminished because of such general supervision.

4.11 Inspection and Payments Constitute No Waiver of Contract Provisions: No inspection by the Engineer or an Inspector, no payment of money, acceptance of part or all of the work by City or its agents shall operate as a waiver of any provision of the Contract.

4.12 Start of Work: The Contractor shall not commence work under the contract, until he has obtained all bonds and insurance required under the agreement and such bonds and insurance have been approved by the City.

4.13 Compensation Insurance: In addition to other required insurance, the Contractor shall obtain and maintain during the life of the contract, Workmen's Compensation Insurance as required by Utah law for all of Contractor's employees employed at the site of the project, and in case any work is sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection as required by Utah law.

4.14 Public Liability and Property Damage Insurance: The Contractor shall take out and maintain during the life of this contract a comprehensive general public liability and property damage insurance policy to protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, and from claims for property damages which may arise from Contractor's operations under this contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them, with the City as an additional named insured. Contractor will furnish concurrent with signing this agreement a certificate of insurance verifying such coverage. The minimum amounts of such insurance for bodily

injury shall be not less than those required in Section 63-30-29 U.C.A., or its replacement, but in no event less than \$100,000 for any one person and \$300,000 for any one accident, and \$100,000 for property damage.

4.15 Automobile Public Liability Insurance: Whenever Contractor or any Subcontractor shall use and operate automobiles, trucks or other vehicles on public streets and highways in complying with the terms and conditions of this contract, each such contract or Subcontractor shall carry Automobile Public Liability Insurance with limits for bodily injury of not less than those required in Section 63-30-29 U.C.A. or its replacement, but in no event less than \$100,000 for any one person and \$300,000 for any one accident, and \$100,000 for property damage.

4.16 Non-Cancellability: Each and every policy of insurance or agreement for any securities as provided in this contract shall be absolutely non-cancellable for a period of not less than thirty (30) days after notice and shall contain the following provisions or one substantially the same as the following:

"This policy or agreement or instrument shall not be subject to cancellation or change or reduction of coverage by the other party or parties thereto, unless notice, as defined herein, is sent to City with a copy to the Engineer, and the City Attorney."

4.17 Performance and Payment Bonds: Whenever the total amount of money payable hereunder exceeds One Thousand Dollars (\$1,000.00), unless otherwise waived in writing by the City, the Contractor, before receiving the Notice to Proceed, shall file with the City a good and sufficient performance bond and a payment bond, each in the sum of not less than 100% of the total amount payable by the terms of the contract. Said bond shall be executed by the Contractor and secured by a company duly and regularly authorized to do a general surety business in the State of Utah with a current A + XII rating or better in A.M. Best Co., Inc.'s Best Insurance Reports, Property and Casualty Edition. Said bonds shall guarantee the faithful performance of the contract by the Contractor and payment of labor and materials and shall insure by its terms to the benefit of the City.

4.18 Guaranty:

a. It is expressly agreed by the Contractor that if in carrying out this contract the workmanship, materials and manner of construction provided in and contemplated by this contract, and part of the same are followed and carried out, the improvement contemplated herein will remain in good condition for the period of one year from the date of its completion, ordinary

wear excepted. If said improvement does not remain in said condition for such length of time, the Contractor agrees that such failure regardless of cause is because of negligence or defects in the workmanship, materials or manner of construction; and the Contractor hereby expressly agrees and guarantees that such improvement and every part thereof will remain in such condition for the period of one year after its completion, and that any repairs or replacement necessary to maintain said improvement and every part thereof in good condition during said time, ordinary wear excepted, will be made by the Contractor, without additional charge or cost to City.

b. The determination of the necessity for repairs above mentioned, which may extend to the whole work, rest entirely with the Engineer, whose decision upon the matter shall be final and obligatory upon the Contractor. If the termination of the said period of one year after the completion and acceptance or the work done under this contract shall fall within the months of November, December, January, February or March, then in that case said months shall not be included in the computation of the said period of one year but said period shall terminate on the 15th day of April next thereafter, unless Contractor is otherwise notified in writing by the Engineer. It is hereby expressly understood and agreed that the City shall not finally accept the work before the date specified by the Engineer, and then only in case all repairs or replacement, determined as above provided, have been made according to standard methods approved by the Engineer.

c. In the event Contractor fails to remedy any such defect within a reasonable time, which in no case shall be longer than the time specified in such written notice, City may proceed to have such defects remedied at Contractor's expense; and Contractor shall pay the costs and charges accruing from such work and any other damages of the City.

d. Neither partial nor final payment nor any provision in the contract documents nor any special warranty shall be held to limit the Contractor's liability hereunder.

4.19 Disposal of Material: The Contractor shall make his own arrangements for disposing of materials and pay all costs involved.

4.20 Preservation of Utilities and Property: Due care shall be exercised to avoid damage to existing roadway improvements, utility facilities, existing structures, adjacent property and trees and shrubbery that are not to be removed under plans and specifications. Trees and shrubbery that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipe lines under or above ground,

sewer and water lines, all street facilities, and any other improvements or facilities within or adjacent to the project shall be protected from injury or damage. The Contractor shall provide and install suitable safeguards, to protect such from injury or damage. If any are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any monies due or to become due to the Contractor under the contract.

a. The City has made its reasonable best efforts at locating and designating utilities on the plans, but the fact that any underground facility is not shown or is inadequately or improperly shown upon the plans shall not relieve the Contractor of responsibility for predetermining such locations under this Section. It shall be the Contractor's responsibility to ascertain the existence and location of any underground improvements or facilities which may be subject to damage by reason of Contractor's operations. The Contractor shall follow all blue stake procedures or take other adequate precautions, making all arrangements for protection or relocation of utilities, if necessary; and complying in every respect with applicable laws concerning excavations and damage to underground utilities.

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

c. The Contractor shall not disturb any survey monuments found on the line of the improvements until ordered by the Engineer. No City survey monument shall be disturbed or moved until the Engineer has been properly notified and the Engineer's Field Surveyors have referenced the said monument for resetting. The parties agree that it is difficult to determine the damages from such disturbance, and the parties agree that contractor will pay as liquidated damages for such the sum of \$500.00 to cover such damage and expense which may be deducted from the Contractor's compensation.

full force and effect until all punch list items have been completed and accepted by the Engineer.

5.04 Progress Schedule: Contractor shall within seven (7) calendar days after the Notice to Proceed, submit to the Engineer a schedule showing the order and dates on which the Contractor proposes to carry out the various aspects of the work. If required by the Engineer, Contractor shall submit supplemental progress schedules. Such schedules shall be consistent in all respects with the time and order of work requirements prescribed by the contract documents.

5.05 Temporary Suspension of Work:

a. The City shall have the authority to suspend the work wholly or in part for such period as City may deem necessary due to unsuitable weather or to such other conditions City considers unfavorable for suitable prosecution of the work, and for such time as City may deem necessary due to the failure on the part of the Contractor to carry out orders given or perform any provision of the contract. The Contractor shall immediately comply with the written order of the City to suspend the work wholly or in part and there shall be no claim against or liability on the part of City for such suspension. The suspended work shall be resumed when the conditions are favorable and methods are corrected as ordered or approved in writing by the Engineer.

b. In the event the suspension of work is ordered for any reason, the Contractor, at his expense shall do all the work necessary to provide a safe, smooth and unobstructed passageway through the construction site for use by public traffic during the period of such suspension as provided in paragraph G-4.06, Public Convenience and Safety hereof, and as specified in the special provisions. In the event that the Contractor fails to perform this work, the City may perform such work and the cost thereof will be deducted from money due or to become due the Contractor.

c. If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered contract working days. In the event of a suspension of work under any of the conditions set forth in this section, such suspension of work shall not relieve the Contractor of its responsibilities set forth in Article GP-4.00 through 4.20, Legal Relations and Responsibility to the Public.

5.06 Delays and Extension of Time: The Contractor shall not be entitled to any claim for damage on account of hinderance or

delay from any cause whatsoever, but if it can be shown to have affected work on the critical path, Contractor shall be granted extensions of time for which liquidated damages will not be claimed by the City, for delays caused by the City, or delays due to strikes, lockouts, war, fire, or acts of God. Delays related to weather shall not be allowed unless the weather is unusually severe and actually delays project work on the critical path as defined by the approved construction schedule. Unusually severe weather shall be defined as weather of such a nature that the construction effort is seriously impaired or actually stopped. Weather shall not be considered severe unless stoppage occurs in excess of 25% more than would be normal for the area and season in question. In the event such an allowance or extension is made, which shall be in the City's sole discretion, it shall be only for the length of time in excess of 125% of said normal weather conditions. U.S. Weather Bureau records shall be used to establish the norms. For weather to be considered justification for extensions in contract completion dates, the weather conditions for the total length of the contract shall be considered. It shall be the Contractor's responsibility to gather all data and prepare all reports to support the request.

a. Contractor agrees that no delay or hindrance caused by City shall entitle Contractor to an extension of time, unless such delays exceed 10% of the working days allowed for performance hereunder. If such City caused delay exceed said percentage, City may in its sole discretion, grant an extension.

b. The Contractor shall, within forty-eight (48) hours from the beginning of any such delay, notify the City in writing of the delay and its cause, and request a specific period of contract time extension. In no event shall City be liable for or Contractor be entitled to any damages for any such delay.

c. Extra work orders issued shall not be construed as City caused delays, unless, in the Engineer's judgment, they adversely affect the critical path. In no event shall City be liable for or Contractor be entitled to any damages for such a delay. Any time extension request, in connection therewith, shall be negotiated as part of the Extra Work Order and shall be noted in writing therein.

5.07 Time of Substantial Completion: The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in this Contract.

5.08 Sanitary Provisions: During the entire progress of the work, the Contractor shall provide and maintain proper toilet facilities for all employees. Sanitary facilities shall be

provisions, Contractor shall make such arrangements as are necessary with the utility and bear all expenses in connection therewith.

6.00 Measurement and Payment.

6.01 Scope of Payment: The Contractor shall accept the compensation provided for in the contract as full payment for furnishing all labor, materials, tools, equipment and incidentals necessary for performing all work contemplated under the contract and for loss or damage arising from the nature of the work or from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the work until acceptance by the City. Said compensation shall also cover all risks of every description connected with the prosecution of the work and for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the contract and for completing the work according to the plans and specifications.

6.02 Extra Work and Force Account:

a. Except as provided in GP-5.09 hereof, an increase in the quantity of any kind of work or material on which a unit price is bid or proposal and which does not involve any basis change in the name or conditions of the work, will not be considered as "Extra Work," but will be paid for at the unit prices named in the bid. If, however, new, additional, or unforeseen work is required which, due to the character of the work, operating conditions or locations does not conform to the specification requirements and unit price upon which bids have been received and provided for in the contract, then such work or material will be considered as "Extra Work," and shall be executed by the Contractor, in the manner and under the terms set forth in an extra work order, which will be entered into between the City and the Contractor. No extra work shall be performed or paid for without a written order for such work.

b. Extra work called for by a City extra work order or force account shall be performed fully and completely and in accordance with the original contract plans and specifications, except for the specific change mentioned in the written order. Drawings accompanying such orders shall be deemed a part of the order.

c. For any extra work or force account, Contractor will supply to City:

1. A breakdown of all labor and material costs in

sufficient detail to enable the City to evaluate the proposal.

(a) All material costs shall be at actual cost evidence by invoice or at the lowest current price at which such materials are locally available, delivered to the job site in the quantities involved, plus sales tax and freight, if any.

2. The costs presented for labor shall be the hourly rate specified in the wage rate section, if any, of the specifications for the craft doing the work and only those personnel actually involved in the on-site construction are to be included in such cost. If a specified wage rate is not to be a requirement of the contract, the Contractor shall submit cancelled checks and any other necessary documents to verify the wage and rate paid each employee.

3. Regardless of ownership, equipment rental rates shall not exceed the lowest listed rates prevailing locally at equipment rental agencies or distributors, at the time the work is performed. The rental rates shall include the cost of fuel, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind and necessary loading and transportation. No extra payment will be made for small hand tools and equipment normally used by the craft doing the work.

4. The following schedule shall be used to determine the markup for profit and overhead.

(a) Work by Prime Contractor:

(1) Materials and equipment - the actual costs only plus 15%

(2) Labor - the actual labor hours multiplied by the applicable wage rate, or actual expenditure for labor, plus 50% of said rate or expenditure for profit and overhead, payroll tax, workmen's compensation, employee benefits, and all other related costs.

(b) Work by subcontractor:

(1) When all or any part of the work is performed by any of the Contractor's subcontractors, the markup established in 6.02 c. 4 (a) shall be applied to the subcontractor's actual cost of such work. A markup of not more than 5 percent shall

be allowed on the total subcontracted portion of the extra work by the prime contractor.

(2) Each such subcontract shall be considered by the City to determine whether performing the work by a subcontractor is justified.

5. Claim for extension of time beyond any contractual completion date shall not be included as a condition of the proposal for extra work, unless the following circumstances apply:

(a) Material delivery dates are such that the work cannot be completed by the contract completion date.

(b) A proposal for extra work is requested by the City during the final one-third of the period set for completion of the contract, and by utilizing the progress schedule, the magnitude or complexity of the intended change can be demonstrated to require extra time beyond the contract completion date. Such time extensions, if any, shall be determined solely by the Engineer, whose decision shall be final and binding on Contractor.

(c) Extra time shall not be granted for work not directly affected by the extra work.

6.03 Force Account Payments: When the price for extra work cannot be agreed upon, the City may require the Contractor to do such work on a force account basis and compensation therefor will be as specified below.

a. Daily reports by Contractor.

1. At the close of each working day, the Contractor shall submit a daily report to the Engineer, together with applicable delivery tickets listing all labor, materials and equipment involving the force account work for that day.

2. The Contractor and Engineer shall agree upon the content of the report daily, which shall be signed by the Engineer and the Contractor. In the event of irreconcilable disagreement, pertinent notes shall be entered on said report by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the

prime contractor. Such reports shall contain the following:

(a) Labor - names of workmen, classification, and hours worked.

(b) Material - a list and description of quantities and material used.

(c) Equipment - type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

b. Basis for establishing costs.

1. Materials - as described in 6.02, c-1.

2. Labor - as described in 6.02, c-2

3. Specialized tool and equipment rental - as described in 6.02, c-3.

(a) If equipment is used intermittently and, when not in use, could be returned to its rental source to save City the expense, it shall be returned, unless the Contractor elects to keep it at the work site at no expense to the City.

(b) The reported rental time for equipment already at the job site shall be only for the duration of its use on force account work, commencing with time it is first put into actual operation on such force account work, including the time required to move it to the site of the force account work.

4. Invoices - vendor's invoices for material and equipment rental shall be submitted with the request for payment. If the request for payment is not substantiated by invoice or other documentation, the City may establish the cost of the material or rental involved at the lowest price available at the time the force account work is performed. If materials used on the force account work are not specifically purchased for such work, but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock; that the quantity claimed was actually used; and that the price and transportation claimed represent the actual cost to the Contractor.

5. Markup - as specified in 6.02, c-4.

6. Compensation - Contractor's compensation shall be accepted by him as payment in full for all force account work done.

7. The City reserves the right to furnish part or all materials or equipment and Contractor shall have no claim for profit on the cost of such material or equipment so furnished.

6.04 Progress Payments: Progress payments will be made, based upon monthly requests signed by the Contractor, as reviewed and approved by the Engineer. Such monthly request shall contain a Schedule of Values, updated to indicate the current percentage and dollar value completion of each category of work listed, the total of which shall become the basis for calculating the progress payment sum.

a. The City shall retain ten percent (10%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the contract by the Contractor. It is provided however, that if at any time after 50% of the work has been completed, and \$50,000 or more has been retained, the City will make any of the remaining partial payments in full, if in the City's sole discretion the work is progressing satisfactorily. The City may pay monthly to the Contractor while carrying on the work, the balance not retained as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate of payment shall be required to be made, when in such estimate of payment shall be required to be made, when in the judgment of the Engineer the work is not proceeding in accordance with the provisions of the contract; or when in his judgment the total value of the work done since the last estimate amounts to less than three hundred dollars (\$300.00). No such estimate or payment shall be construed to be an acceptance of any defective or improper work or materials.

b. The City reserves the right to withhold payment should the Contractor at any time, in the opinion of the Engineer, be in substantial non-compliance with the contract.

6.05 Lump Sum Cost Breakdown: Within ten (10) calendar days following the date of Notice to Proceed, or as otherwise indicated therein, the Contractor shall submit a segregation of the contract price itemizing the estimated cost of each class of work. Each item will include a prorata allowance for profit, insurance and overhead expense. The total of the items shall equal the contract price. Bond expense shall not be prorated, but should be shown as a separate item. This segregation, when

SECTION 101 - GENERAL REQUIREMENTS

101.07 ORDER OF THE WORK

The work shall be carried on at such places on the project and also in such order or precedence as may be found necessary by the Engineer to expedite the completion of the project. After work has begun on any portion of designated part of the project, it shall be carried forward to its final completion. All work shall conform to the provisions of the approved Contractor's schedule as specified under "Contractor's Schedules" in Section 130.

101.08 INTERFERENCE WITH ADJACENT WORK

The Contractor shall cooperate fully with all utility forces of the Owner or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities which interfere with the progress of the work, and shall schedule the work so as to minimize interference with said relocation, altering, or other rearranging of facilities.

101.09 SEQUENCE OF CONSTRUCTION

(a) The Contractor shall submit to the Engineer a construction schedule covering the entire work before any work is commenced. The schedule shall be in the form of a critical path method diagram, complete with estimated dates for start and finish of each item of work.

(b) The Owner reserves the right to determine the sequence of construction which may be most opportune to the Owner. Some easements are still being negotiated by the owner and may require portions of pipeline construction be delayed or perhaps deleted until easements are secured.

(c) The following construction constraints should be used as a guideline in preparing the scheduling. Deviation from these suggested sequences is permitted if techniques and methods known to the Contractor will result in reducing the disruption of the facility operation and is concurred with by the Engineer.

SCHEDULE OF TRANSMISSION PIPELINE CONNECTIONS TO EXISTING PIPELINES

<u>Connection Location</u>	<u>Allowable Time Period to Construct Connection</u>	<u>Maximum Down Time During Const. of Connection</u>	<u>Lead Time Req'd to Notify Utility Owner of Const.</u>
30" Connection at 500 South and 1650 East	Oct - April	3 days	24 hours

SECTION 140 - QUALITY CONTROL

140.01 SITE INVESTIGATION AND CONTROL

(a) The Contractor shall verify all dimensions in the field and shall check field conditions continuously during construction. The Contractor shall be solely responsible for any inaccuracies built into the work due to his failure to comply with this requirement.

(b) The Contractor shall inspect related and appurtenant work and shall report in writing to the Engineer any conditions which will prevent proper completion of the work. Failure to report any such conditions shall constitute acceptance of all site conditions, and any required removal, repair, or replacement caused by unsuitable conditions shall be performed by the Contractor at his sole cost and expense.

140.02 INSPECTION OF THE WORK

(a) The work shall be conducted under the general observation of the Engineer and shall be subject to inspection by representatives of the Engineer acting on behalf of the Owner to insure strict compliance with the requirements of the Contract Documents. Such inspection may include mill, plant, shop or field inspection, as required. The Engineer shall be permitted access to all parts of the work, including plants where materials or equipment are manufactured or fabricated.

(b) The presence of the Engineer or any inspector(s), however, shall not relieve the Contractor of the responsibility for the proper execution of the work in accordance with all requirements of the Contract Documents. Compliance is a duty of the Contractor, and said duty shall not be avoided by any act or omission on the part of the Engineer or any inspector(s).

(c) All materials and articles furnished by the Contractor shall be subject to rigid inspection, and no materials or articles shall be used in the work until they have been inspected and accepted by the Engineer or his authorized representative. No work shall be backfilled, buried, cast in concrete, hidden or otherwise covered until it has been inspected by the Engineer or his authorized representative. Any work so covered in the absence of inspection shall be subject to uncovering. Where uninspected work cannot be uncovered, such as in concrete cast over reinforcing steel, all such work shall be subject to demolition, removal, and reconstruction under proper inspection, and no addition payment will be allowed therefor.

140.03 TIME OF INSPECTION AND TESTS

Samples and test specimens required under these specifications shall be furnished and prepared for testing in ample time for the completion of the necessary tests and analyses before said articles or materials are to be used. The Contractor shall furnish and prepare all required test specimens at his own expense. Except as otherwise provided in these specifications, performance of the required tests will be by the Owner, and all costs therefor will be borne by the Owner at no cost to the Contractor; except, that the costs of any test which shows unsatisfactory results shall be borne by the Contractor. Whenever the Contractor is ready to backfill, bury, cast in concrete, hide, or otherwise

SECTION 140 - QUALITY CONTROL

cover any work under the contract, he shall notify the Engineer not less than 24 hours in advance to request inspection before beginning any such work of covering. Failure of the Contractor to notify the Engineer at least 24 hours in advance of any such inspections shall be reasonable cause for the Engineer to order a sufficient delay in the Contractor's schedule to allow time for such inspections and any remedial or corrective work required, and all costs of such delays, including its effect upon other portions of the work, shall be borne by the Contractor.

140.04 SAMPLING AND TESTING

(a) When not otherwise specified, all sampling and testing shall be in accordance with the methods prescribed in the current standards of the ASTM, as applicable to the class and nature of the article or materials considered; however, the Owner reserves the right to use any generally-accepted system of inspection which, in the opinion of the Engineer will insure the Owner that the quality of the workmanship is in full accord with the specifications.

(b) Any waiver of any specific testing or other quality assurance measures, whether or not such waiver is accompanied by a guarantee of substantial performance as a relief from the specified testing or other quality assurance requirements as originally specified, and whether or not such guarantee is accompanied by a performance bond to assure execution of any necessary corrective or remedial work, shall not be construed as a waiver of any technical or qualitative requirements of the specifications.

(c) Notwithstanding the existence of such waiver, the Engineer shall reserve the right to make independent investigations and tests as specified in Subparagraph 140.04 (d), following; and, upon failure of any portion of the work to meet any of the qualitative requirements of the specifications, shall be reasonable cause for the Engineer to require the removal or correction and reconstruction of any such work.

(d) In addition to any other inspection or quality assurance provisions that may be specified, the Engineer shall have the right to independently select, test, and analyze, at the expense of the Owner, additional test specimens of any or all of the materials to be used. Results of such tests and analyses shall be considered along with the tests or analyses made by the Contractor to determine compliance with the applicable specifications for the materials so tested or analyzed; provided, that wherever any portion of the work is discovered, as a result of such independent testing or investigation by the Engineer, which fails to meet the requirements of the specifications, all costs of such independent inspection and investigation, and all costs of removal, correction, and reconstruction or repair of any such work shall be borne by the Contractor.

140.05 RIGHT OF REJECTION

(a) The Engineer, acting for the Owner shall have the right, at all times and places, to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of these specifications, regardless of whether the defects in such articles or materials are detected

SECTION 140 - QUALITY CONTROL

at the point of manufacture or after completion of the work at the site. If the Engineer or inspector, through an oversight or otherwise, has accepted materials or work which is defective or which is contrary to the specifications, such material, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected by the Engineer for the Owner.

(b) The Contractor shall promptly remove rejected articles or materials from the site of the work after notification of rejection.

(c) All costs of removal and replacement of rejected articles or materials as specified herein shall be borne by the Contractor.

- END OF SECTION -

SECTION 160 - PROTECTION AND RESTORATION OF EXISTING FACILITIES

160.04 EXISTING UTILITIES AND IMPROVEMENTS

(a) GENERAL. The Contractor shall protect all utilities and other improvements which may be impaired during construction operations. The Engineer has attempted to show the location of all known underground utilities, but it shall be the Contractor's responsibility to ascertain the actual location of all existing utilities, service connections and other improvements that will be encountered in his construction operations, and to see that such utilities or other improvements are adequately protected from damage due to such operations. The Contractor shall take all possible precautions for the protection of unforeseen utility lines to provide for uninterrupted service. The Contractor will be required to coordinate shoring and bracing of overhead utility poles with the Owner. In the event any utilities, service connections, or other improvements are damaged, they shall be repaired at no additional expense to the Owner.

(b) APPROVAL OF REPAIRS. All repairs to a damaged improvement shall be inspected and approved by an authorized representative of the improvement owner before being concealed by backfill or other work.

(c) RELOCATION OF UTILITIES. Where the proper completion of the work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement which is shown on the drawings, the Contractor shall at his own expense, remove and, without unnecessary delay, temporarily replace or relocate such utility or improvement in a manner satisfactory to the Engineer and the owner of the facility. In all cases of such temporary removal or relocation, restoration to former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former locations and to as good or better condition than found prior to removal.

(d) MAINTAINING IN SERVICE. All oil and gasoline pipelines, power and telephone or other communication cable ducts, gas and water mains, irrigation lines, sewer lines, storm drain lines, poles, and overhead power and communication wires and cables encountered along the line of the work shall be maintained continuously in service during all the operations under the contract, unless other arrangements satisfactory to the Engineer are made with the owner of said pipelines, duct, main, irrigation line, sewer, storm drain, pole, or wire or cable. The Contractor shall be responsible for and shall make good all damage due to his operations, and the provisions of this Section shall not be abated even in the event such damage occurs after backfilling or is not discovered until after completion of the backfilling.

160.05 TREES WITHIN STREET RIGHTS-OF-WAY AND PROJECT LIMITS

(a) GENERAL. The Contractor shall exercise all necessary precautions so as not to damage or destroy any trees or shrubs, including those lying within street rights-of-way and project limits, and shall not trim or remove any trees unless such trees have been approved for trimming or removal by the Engineer and the jurisdictional agency or Owner. All existing trees and shrubs which are damaged during construction shall be trimmed or replaced by the Contractor or a certified tree company under permit from the jurisdictional Owner and to the satisfaction of said agency and/or the Owner.

SECTION 190 - PROJECT CLOSEOUT

190.01 FINAL CLEANUP

The Contractor shall promptly remove from the vicinity of the completed work, all rubbish, unused materials, concrete forms, construction equipment, and temporary structures and facilities used during construction. Final acceptance of the work by the Owner will be withheld until the Contractor has satisfactorily complied with the foregoing requirements for final cleanup of the project site.

190.02 CLOSEOUT TIMETABLE

The Contractor shall establish dates for equipment testing, acceptance periods, and on-site instructional periods (as required under the contract). Such dates shall be established not less than one week prior to beginning any of the foregoing items, to allow the Owner, the Engineer, and their authorized representatives sufficient time to schedule attendance at such activities.

190.03 FINAL SUBMITTALS

The Contractor, prior to requesting final payment, shall obtain and submit the following items to the Engineer for transmittal to the Owner:

- (a) Written guarantees, where required.
- (b) Operating manuals and instructions.
- (c) Completed record drawings.
- (d) Releases from all parties who are entitled to claims against the subject project, property, or improvement pursuant to the provisions of law.

190.04 MAINTENANCE AND GUARANTEE

(a) The Contractor shall comply with the maintenance and guarantee requirements contained in the General Provisions.

(b) Replacement of earth fill or backfill, where it has settled below the required finish elevations, shall be considered as a part of such required repair work, and any repair or resurfacing constructed by the Contractor which becomes necessary by reason of such settlement shall likewise be considered as a part of such required repair work unless the Contractor shall have obtained a statement in writing from the affected private owner or public agency releasing the Owner from further responsibility in connection with such repair or resurfacing.

(c) The Contractor shall make all repairs and replacements promptly upon receipt of written order from the Owner. If the Contractor fails to make such repairs or replacements promptly, the Owner reserves the right to do the work and the Contractor and his surety shall be liable to the Owner for the cost thereof.

SECTION 201 - EARTHWORK

201.03 EXCAVATION

(a) GENERAL. Except when specifically provided to the contrary, excavation shall include the removal of all materials of whatever nature encountered, including all obstructions of any nature that would interfere with the proper execution and completion of the work. The removal of said materials shall conform to the lines and grades shown or ordered. Unless otherwise provided, the entire construction site shall be stripped of all vegetation and debris, and such material shall be removed from the site prior to performing any excavation or placing any fill. The Contractor shall furnish, place, and maintain all supports and shoring that may be required for the sides of the excavations, and all pumping, ditching, or other approved measures for the removal or exclusion of water, including taking care of storm water and waste water reaching the site of the work from any source so as to prevent damage to the work or adjoining property. Excavations shall be sloped or otherwise supported in a safe manner in accordance with applicable State safety requirements and the requirements of OSHA Safety and Health Standards for Construction (29 CFR1926).

(b) EXCAVATION BENEATH STRUCTURES. Except where otherwise specified for a particular structure or ordered by the Engineer, excavation shall be carried 12-inches below the grade of the bottom of the footing or slab. Where shown or ordered, areas beneath structures shall be over-excavated. When such over-excavation is shown on the drawings, both over-excavation and subsequent backfill to the required grade shall be performed by the Contractor at his own expense. When such over-excavation is not shown but is ordered by the Engineer, such over-excavation and any resulting backfill will be paid for under a separate unit price bid item if such bid item has been established; otherwise payment will be made in accordance with a negotiated price. After the required excavation or over-excavation has been completed, the exposed surface shall be scarified to a depth of 6 inches, brought to optimum moisture content, and rolled with heavy compaction equipment to 96 percent of maximum density.

(c) PIPELINE TRENCH EXCAVATION

(1) GENERAL. Excavation for pipelines shall be open-cut trenches. The bottom of the trench shall have a minimum width equal to the outside diameter of the pipe plus 12 inches and a maximum width equal to the outside diameter of the pipe plus 20 inches.

Trenches shall be over-excavated 6 inches below the bottom of the pipe or as directed by the Engineer. The trench shall be refilled to the grade of the bottom of the pipe with either selected granular material obtained from the excavation, sand, or crushed rock, at the option of the Engineer. When crushed rock bedding is ordered, the material shall be a well-graded material of 1-1/2-inch maximum size or as required by the Engineer. Bedding material shall be placed in layers, brought to optimum moisture content, and compacted to 96 percent of maximum density. All work specified in this Subsection shall be performed by the Contractor at his own expense when the over-excavation ordered by the Engineer is 6 inches or less below the limits shown. When the over-

SECTION 201 - EARTHWORK

excavation ordered by the Engineer is greater than 6-inches additional payment will be made to the Contractor for that portion of the work which is located below said 6-inch distance. Said additional payment will be made under separate unit price bid items for over-excavation.

The trench bottom shall be given a final trim using a string line for establishing grade, such that each pipe section when first laid will be continually in contact with the ground along the extreme bottom of the pipe. Rounding out the trench to form a cradle for the pipe will be required.

The maximum amount of open trench permitted in any one location shall be one block, or the length necessary to accommodate the amount of pipe installed in a single day, whichever is less. All trenches shall be fully backfilled at the end of each day or when approved by the Engineer.

The above requirements for backfilling will be waived in cases where the trench is located further than 100 feet from any travelled roadway or occupied structure. In such cases, however, barricades and warning lights satisfactory to the Engineer shall be provided and maintained.

(d) OVER-EXCAVATION NOT ORDERED, SPECIFIED, OR SHOWN. Any over-excavation carried below the grade or width ordered, specified, or shown, shall be refilled to the required grade with suitable selected granular material. Such material shall be moistened as required and compacted to 96 percent of maximum density. Such work shall be performed by the Contractor at his own expense.

(e) DISPOSAL OF EXCESS EXCAVATED MATERIAL. The Contractor shall remove and dispose of all excess excavated material at his own expense.

(f) EXCAVATION IN VICINITY OF TREES. Except where trees are shown on the drawings to be removed, trees shall be protected from injury during construction operations. No tree roots over 2 inches in diameter shall be cut without express permission of the Engineer. Trees shall be supported during excavation as may be directed by the Engineer.

(g) ROCK EXCAVATION. Rock excavation shall include removal and disposal of the following: (a) all rock material in ledges, bedding deposits, and unstratified masses which cannot be removed without systematic drilling and blasting; (b) concrete or masonry structures which have been abandoned; and (c) conglomerate deposits which are so firmly cemented that they possess the characteristics of solid rock and which cannot be removed without systematic drilling and blasting.

(h) EXCAVATION IN LAWN AREAS. Where pipeline excavation occurs in lawn areas, the sod and top soil shall be carefully removed and stockpiled to preserve it for replacement. Excavated material from the trench may be placed on the lawn provided a drop cloth or other suitable method is employed to protect the lawn from damage. The lawn shall not remain covered for more than 72 hours. Immediately after completion of backfilling and testing of

SECTION 201 - EARTHWORK

the pipeline, the sod shall be replaced in a manner so as to restore the lawn as near as possible to its original condition.

201.04 BACKFILL

(a) GENERAL. Backfill shall not be dropped directly upon any structure or pipe. Materials used for backfill shall be selected material, free from grass, roots, brush, or other vegetation, or boulders having maximum dimension larger than 6 inches. Material coming within 6 inches of any structure or pipe shall be free of rocks or unbroken masses of earthy materials having maximum dimension larger than 2 inches. Backfill shall not be placed around or upon any structure until the concrete has attained sufficient strength to withstand the loads imposed.

(b) BACKFILL AROUND AND BENEATH STRUCTURES. Except where otherwise specified for a particular structure or ordered by the Engineer, backfill placed around and beneath structures, shall be placed in horizontal layers not to exceed 12 inches in thickness, as measured before compaction, where compaction is attained by means of sheepsfoot rollers. Where the use of sheepsfoot rollers is impractical, the layers shall not exceed 6 inches in thickness before compaction, and compaction shall be attained by means of hand-operated power-driven tampers. The backfill shall be brought up evenly with each layer moistened and compacted by mechanical means to 96 percent of maximum density beneath structures and beneath paved areas and 90 percent of maximum density around the sides of structures where no pavement is to be constructed.

(c) PIPELINE TRENCH BACKFILL

(1) Pipeline trenches shall be backfilled to a level 6 inches above the top of the pipe with selected material obtained from the excavation. If, in the Engineer's opinion, said material is unsuitable for backfill purposes, imported material having a sand equivalent value of not less than 20 shall be used for this portion of the trench backfill. This granular material shall pass a 3 inch square sieve and shall not contain more than 15% of material passing a 200-mesh sieve and shall be of such a character as to permit water to pass through it quickly. Imported select backfill shall be included in payment for installation of the pipe. Such material shall be compacted to 96 percent of maximum density where the trench is located under structures, and 90 percent of maximum density elsewhere. Compaction shall be obtained by mechanical means or, if approved by the Engineer, by using excess water and passing a concrete vibrator between the pipe and side of the trench.

(2) After the initial portion of backfill has been placed as specified above, and after all excess water has completely drained from the trench, backfilling of the remainder of the trench may proceed. Backfill material exceeding the optimum moisture content for backfilling will be graded and dried by the Contractor as directed by the Engineer until optimum moisture content is attained. Payment for this work will be included in payment for pipe. The remainder of the backfill shall be selected material free of asphalt, concrete and vegetation obtained

SECTION 201 - EARTHWORK

from the excavation and shall be placed in 12" horizontal layers. Boulders larger than 6 inches in diameter will be excluded from the backfill. Each layer shall be moistened, tamped, puddled, rolled or otherwise compacted to 96 percent density where the trench is located under structures or roads, and 90 percent of maximum density elsewhere. Power-operated hauling or rolling equipment shall not be allowed to travel over the pipe unless 3 feet of densified backfill has been placed over the top of the pipe. If the backfill material is sandy or granular in nature and the trench is not located under a structure, or paved area, the layer construction may be eliminated, and compaction may be obtained by flooding and jetting. If flooding and jetting is permitted, the remaining backfill shall be placed in layers not exceeding 3 feet in thickness. Each layer shall be flooded, jetted and pooled to secure complete saturation of the material before placing the next layer. Prior to flooding and jetting, precautions shall be taken to prevent the pipe from floating. (Owner will not allow flooding and jetting of trenches).

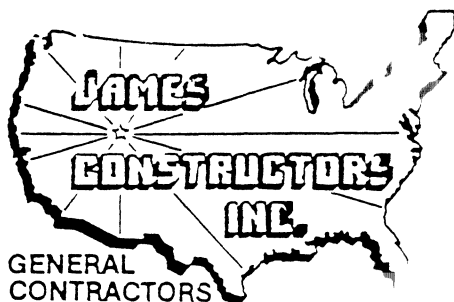
201.05 EMBANKMENT FILL

The area where an embankment is to be constructed shall be cleared of all vegetation, roots and foreign material. Following this, the surface shall be moistened, scarified to a depth of 6 inches, and rolled or otherwise mechanically compacted to 96 percent of maximum density under structures, and 90 percent of maximum density elsewhere. Embankment fill shall be placed in horizontal layers not to exceed 12 inches in thickness, as measured before compaction, where compaction is attained by means of sheepsfoot rollers. Where use of sheepsfoot rollers is impracticable, the layers shall not exceed 6 inches in thickness before compaction, and compaction shall be attained by means of hand-operated power-driven tampers. The backfill shall be brought up evenly with each layer moistened and compacted by mechanical means to 96 percent of maximum density under structures, and 90 percent of maximum density elsewhere.

201.06 COMPACTION TESTS

Where backfill or bedding is required in these specifications to be compacted to a specified density, tests for compliance will be made by the Engineer, at the expense of the Owner, using ASTM T-180 Method D test procedures. Sufficient time shall be allotted the Engineer for performing the necessary control tests for an acceptance of the compacted layer before attempting to place new fill material. Any layer or portion thereof, that does not meet density requirements, shall be reworked and recompacted until it meets the specified density requirements as determined by the Engineer. Additional tests made as a result of non-compliance shall be at the Contractor's expense.

EXHIBIT 2



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

April 19, 1984

Salt Lake City Corporation
Department of Public Utilities
Water Supply and Waterworks
1530 South West Temple Street
Salt Lake City, UT 84115

ATTENTION: Mr. E. T. Doxey

Dear Mr. Doxey:

As of April 13, 1984, James Constructors, Inc. has performed services and has standby charges considered to be extra to Contract 35-4184. These charges are in addition to those submitted March 7 and March 16, 1984. The charges are as follows:

April 3, 1984--Repair of Sewer Lateral--Texas Street	
Labor	\$ 579.00
Equipment	1,645.00
Material	302.89
	<u>\$2,526.89</u>

April 14, 1984--Repair of Sewer Lateral--Texas Street	
Labor	\$ 986.80
Equipment	2,289.00
	<u>\$3,275.80</u>

April 5, 1984--Repair of Sink Hole--Yale and 2100 East	
Labor	\$ 870.78
Equipment	1,904.50
	<u>\$2,775.28</u>

April 6, 1984--Repair of Sink Hole--Yale and 2100 East	
Labor	\$1,280.18
Equipment	2,614.00
Material	754.99
	<u>\$4,649.17</u>

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Page Two

April 9, 1984--Repair of Sink Hole--Yale and 2100 East

Labor	\$1,247.60
Equipment	<u>2,600.00</u>
	\$3,847.60

April 10, 1984--Repair of Sink Hole--Yale and 2100 East

Labor	\$1,036.50
Equipment	2,178.00
Material	<u>279.86</u>
	\$3,494.36

April 11, 1984--Repair of Sink Hole--Yale and 2100 East

Labor	\$ 677.45
Equipment	<u>865.50</u>
	\$1,542.95

April 12, 1984--Repair of Sink Hole--Yale and 2100 East

Labor	\$1,329.80
Equipment	2,856.00
Material	<u>237.80</u>
	\$4,423.60

April 13, 1984--Repair of Sink Hole--Yale and 2100 East

Labor	\$1,266.95
Equipment	2,490.50
Material	<u>135.00</u>
	\$3,892.45

Total April 3 thru 13, 1984	\$ 30,428.10
Standby per attachment	29,229.60
Repair of 2300 East per attachment	<u>57,261.65</u>
	\$116,919.35

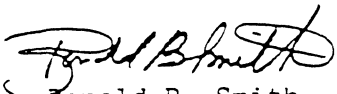
Claim March 7, 1984	\$398,371.63
Charges March 16, 1984	<u>5,009.22</u>

Total through March 13, 1984	\$520,300.20
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Demobilization due to improper Termination per attachment	<u>6,542.88</u>
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Total Claim	<u><u>\$526,843.08</u></u>
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Yours very truly,


Ronald B. Smith
Contract Administrator

KEY PERSONNEL STANDBY TIME TO APRIL 13, 1984

February 20 to 23, 1984	32 hours
February 24, 1984	4 hours
March 26 to 30, 1984	40 hours
	<u>76 hours</u>

Superintendent	76 hours @ 30.00	\$ 2,280.00
Engineer	76 hours @ 23.60	<u>1,793.60</u>
		4,073.60

EQUIPMENT STANDBY TIME TO APRIL 13, 1984

Pickup (3)	76 hours @ 9.00	2,052.00
Backhoe 225	76 hours @ 47.00	3,572.00
Backhoe 500 C	76 hours @ 21.00	1,596.00
Loader 644 (2)	76 hours @ 27.00	4,104.00
Water Truck	76 hours @ 17.00	1,292.00
Rollers (3)	76 hours @ 20.00	4,560.00
Compactor (2)	76 hours @ 3.00	456.00
Flatbed Truck	76 hours @ 10.00	760.00
Dump Truck (2)	76 hours @ 17.00	2,584.00
Compressor (2)	76 hours @ 9.00	1,368.00
Grader Cat 14	76 hours @ 37.00	<u>2,812.00</u>
Total Equipment Standby Cost		\$25,156.00

Total Standby Cost	<u>\$29,229.60</u>
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Demobilization Costs

April 16, 1984

\$2,051.68

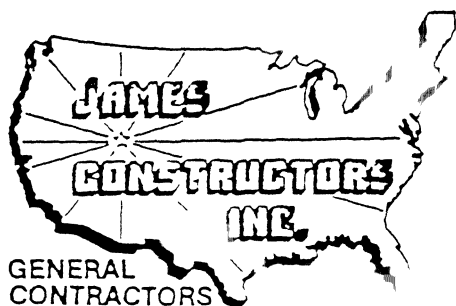
Personnel

Superintendent	32 hrs @ 30.00	\$ 960.00
Engineer	72 hrs @ 23.60	<u>1,699.20</u>
		2,659.20

Equipment

Flat Bed Dump Truck	32 hrs @ 15.00	480.00
Pickup	32 hrs @ 13.00	416.00
Pickup	72 hrs @ 13.00	<u>936.00</u>
		1,832.00

4,491.20
<u>\$6,542.88</u>



P.O. Box 25726-84125
 3765 West 2100 South
 Salt Lake City, Utah 84120
 (801) 973-9212

April 16, 1984

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Salt Lake City Corporation
 Department of Public Utilities
 Water Supply and Waterworks
 1530 South West Temple Street
 Salt Lake City, UT 84115

ATTENTION: Mr. E. T. Doxey

Dear Mr. Doxey:

As of 23 March, 1984, James Constructors has completed the directed sink hole repair on 2300 East. The details of individual repairs are as follows:

<u>Dates/Location</u>	<u>Trench Length</u>	<u>Input Material</u>	<u>Asphalt</u>
March 7, 8, 9, 1984 Downington Avenue and 2300 East	118 LF	325.9 Tons	30 Tons
<u>Category</u>	<u>3/7/84</u>	<u>3/8/84</u>	<u>3/9/84</u>
Labor	\$ 308.80	\$ 653.00	\$ 834.00
Equipment	556.00	1,235.00	1,386.00
Material	150.53	904.04	751.95
Total	\$1,015.33	\$2,792.04	\$2,971.95
			\$6,779.32
<u>Dates/Location</u>	<u>Trench Length</u>	<u>Input Material</u>	<u>Asphalt</u>
March 12, 13, 1984 Garfield Avenue and 2300 East	125 LF	324.95 Input	30 Tons
<u>Category</u>	<u>3/12/84</u>	<u>3/13/84</u>	
Labor	\$1,038.25	\$1,134.88	
Equipment	2,478.50	2,750.00	
Material	1,051.74	1,219.73	
Total	\$4,568.49	\$5,104.61	\$9,673.10

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<u>Date/Location</u>	<u>Trench Length</u>	<u>Input Material</u>	<u>Asphalt</u>
March 14, 15, 16, 19, 20, 21, 1984 Ramona Avenue and 2300 East	391 LF	705.9 Tons	125 Tons

<u>Category</u>	3/14/84	3/15/84	3/16/84
Labor	\$1,220.08	\$1,368.68	\$1,355.20
Equipment	2,846.00	2,824.00	2,456.00
Material	394.88	2,005.57	1,239.68
Total	<u>\$4,460.96</u>	<u>\$6,198.25</u>	<u>\$5,050.88</u>

<u>Category</u>	3/19/84	3/20/84	3/21/84	
Labor	\$1,382.50	\$1,592.15	\$1,524.40	
Equipment	2,481.00	2,468.50	2,560.00	
Material	214.40	1,878.16	1,164.40	
Total	<u>\$4,077.90</u>	<u>\$5,938.81</u>	<u>\$5,251.80</u>	\$30,978.60

<u>Date/Location</u>	<u>Trench Length</u>	<u>Input Material</u>	<u>Asphalt</u>
March 22, 1984 Wilson Avenue and 2300 East	50 LF	61.1 Tons	10 Tons

<u>Category</u>	
Labor	\$1,560.80
Equipment	2,640.00
Material	1,461.43
Total	<u>\$5,662.23</u>

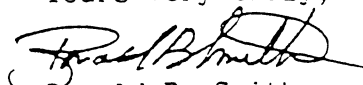
<u>Date/Location</u>	
March 23, 1984 Wilson Avenue and Redondo Avenue and 2300 East	Paving material included in above tabulation.

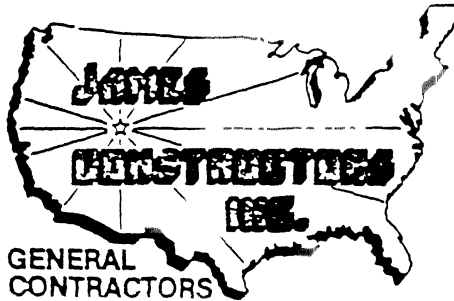
<u>Category</u>	
Labor	\$1,209.20
Equipment	1,663.00
Material	1,296.20
Total	<u>\$4,168.40</u>

GRAND TOTAL	<u><u>\$57,261.65</u></u>
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The above Grand Total represents James Constructors, Inc., claim for the reexcavation and repaving of 2300 East at the location designated by Salt Lake Waterworks Inspectors. James Constructors believes this work is an extra to contract 35-4184.

Yours very truly,


Ronald B. Smith
Contract Administrator



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

March 16, 1984

COPY

Salt Lake City Corporation
Department of Public Utilities
Water Supply and Waterworks
1530 South West Temple Street
Salt Lake City, UT 84115

ATTENTION: E. T. Doxey

Dear Mr. Doxey

The following is a listing of activities by James Constructors between February 20, 1984 and March 7, 1984, considered to be extra work. The itemization does not include import backfill as it is included in the invoice ending the same date.

Labor	\$214.40	February 24, 1984-cold patched at
Equip.	188.00	1300 S. and 2100 E. and St. Marys
Material	239.07	and 2100 East.
	<u>\$641.47</u>	
Labor	\$428.80	February 27, 1984-Cold patched at
Equip.	416.00	Station 82+75 to 82+85, 94+20, 116+05
Material	397.12	124+50, filled holes on 2100 East.
	<u>\$1,241.92</u>	Repaired 2" water line at Station
		13+50.
Labor	\$617.60	February 28, 1984-Pulled joint 406,
Equip.	671.00	moved centerline, grouted pipe and
	<u>\$1,288.60</u>	started backfill.
Labor	\$193.00	March 2, 1984-Cold patched Foothill
Equip.	142.50	and 2100 East and 1700 South and 2100
Material	636.93	East
	<u>\$972.43</u>	
Labor	\$308.80	March 7, 1984-Started excavation of
Equip.	556.00	sinkhole at 135+00.
	<u>\$864.80</u>	

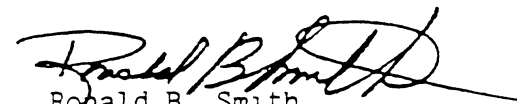
Total Extra Work -- \$5,009.22

Page Two

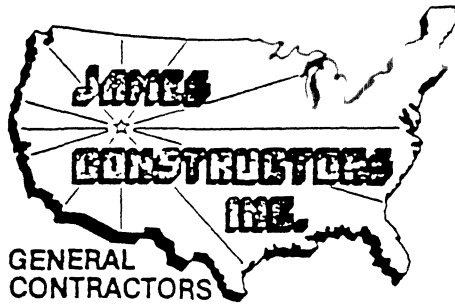
This claim for extra work is in addition to the claim dated March 7, 1984 and should be added to that amount.

Thank you for your consideration of this matter.

Yours very truly


Ronald B. Smith
Contract Administrator

dt



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

March 7, 1984

COPY

Salt Lake City Corporation
Department of Public Utilities
Water Supply and Waterworks
1530 South West Temple Street
Salt Lake City, UT 84115

ATTENTION: E. T. Doxey

Dear Mr. Doxey

James Constructors has great concern over the water entering the structure at 1300 South from the storm drain system.

This fact has been verified by the dye test run January 27, 1984, where approximately ten minutes after dye was placed in the storm drain, it began to enter the structure. This was further confirmed on February 16, 1984, when solvent entered the structure from the storm drain.

At the time of the solvent entry, city personnel present responsible for storm drains indicated repair or replacement of these drains was not scheduled for the near future. Indications were that any corrective action would not occur for at least two to three years. This creates a problem, not only in access to, and contamination of the structure for this period, but also of deterioration of the backfill of the pipeline in this area.

This induced ground water is undoubtedly entering the backfill area of the pipeline and causing settlement of the fill. This water would then be a major contributing cause of sink holes in the area. Repair of these sink holes using import backfill may or may not alleviate future settlement due to this ground water depending on the extent of import backfilled used, but in any event cannot be guaranteed.

Page Two

James Constructors, Inc. therefore recommends repair or replacement of these storm drains be placed high on the City's priority list to alleviate this problem.

Thank you for your consideration of this problem. If you have any questions, please contact the undersigned.

Yours very truly

A handwritten signature in black ink, appearing to read "Ronald B. Smith", with a long horizontal flourish extending to the right.

Ronald B. Smith
Contract Administrator

dt



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

February 16, 1984

Salt Lake City Corporation
Department of Public Utilities
Water Supply and Waterworks
1530 S. West Temple Street
Salt Lake City, UT 84115

CO DV

ATTENTION: E. T. Doxey

Dear Mr. Doxey

This letter constitutes notice of James Constructors, Inc. intention to file a claim for additional compensation under the Big Cottonwood Conduit Extension Terminal/Park Water Transmission Pipeline contract.

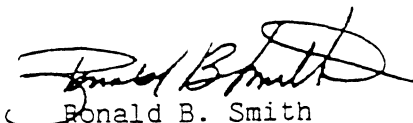
This claim is based on substantial increases in construction costs occasioned by delays in receipt of owner-furnished materials, owner imposed design changes, stop work orders issued for the owners' convenience, and delays caused by inaction on the part of the owners' representatives.

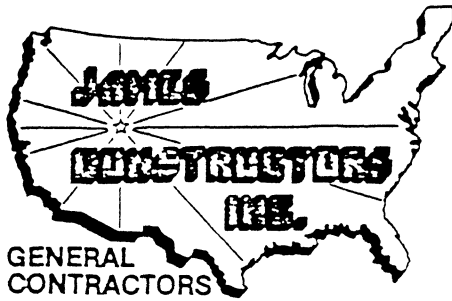
The claim will be in three parts for the purpose of clarity. The first part will be composed of increased costs for the abovementioned reasons incurred on or before the December 2, 1983 suspension of work date. The second part will consist of increased costs for the same reasons but being incurred subsequent to that date and up to and including the date of the claim. A subsequent claim may be submitted for additional increased costs, if any, incurred for the abovementioned reasons, incurred prior to restart of construction. Each part of the claim will include costs incurred by our subcontractor Ortega/RU Construction.

This claim will be submitted in writing within a few days, however, in view of recent events, of which elaboration would serve no purpose at this time, it is considered necessary for notice to be given now.

Thank you in advance for your consideration in this matter. If you have any questions, please contact the undersigned.

Yours very truly


Ronald B. Smith



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

March 7, 1984

Salt Lake City Corporation
Department of Public Utilities
Water Supply and Waterworks
1530 South West Temple Street
Salt Lake City, UT 84115

COPY

ATTENTION: E. T. Doxey

Dear Mr. Doxey

Enclosed herewith is James Constructors Inc.'s claim in the amount of \$398,371.63 representing increased costs caused by delays in receipt of City furnished material, design changes and construction sequence changes for the convenience of the City.

These increased costs are summarized on the first page of the attachment with detailed costs attached supporting the summary. James Constructors requests the City evaluate this claim as soon as is convenient so we may reach an equitable settlement at an early date.

Proceeds of this settlement are required not only to pay suppliers balances owed due to the delay, but to fund construction when the City determines weather will allow restart of operations.

If James Constructors may be of any assistance in your evaluation or you may require additional information, do not hesitate to ask.

Yours very truly

Ronald B. Smith
Contract Administrator

dt

Enclosures

CLAIM SUMMARY

James Delays to December 2, 1983	\$122,949.81
Delays Caused by Extra Welds Same Period	29,733.60
James Equipment Standby Time Same Period	73,818.00
Ortega/RU Claim Same Period	
38,694.78 with 5%	40,629.52
James Extra Work December 2, 1984 to February 19, 1984	22,315.50
James Equipment Standby Time Same Period	88,254.00
James Key Personnel Standby Time Same Period	<u>20,671.20</u>
Total Claim Through February 19, 1984	<u>\$398,371.63</u>

JAMES DELAYS TO DECEMBER 2, 1983

<u>Claim #</u>		<u>Amount</u>	<u>Description</u>
1	Labor	5,964.00	7/19/83 30" waterline at 0+00 misstaked by 4' line was cut, valves inoperative reservoir drained prior to repair.
2	Equip.	5,440.00	Valve structure and second structure relocated 2'9" south and 30' west of original location. Second structure not built to drawing.
		<u>11,404.00</u>	
3	Labor	2,273.60	8/12/83 cut and repaired 2" water line, 1" water line and power cables not shown on drawing.
	Equip.	2,224.00	
		<u>4,497.60</u>	
4	Labor	2,780.00	8/15/83 manhole south of VA hospital required 2 foot swing to miss required re-excavation of trench.
	Equip.	2,800.00	
		<u>5,580.00</u>	
		5,460.00	Move around 8/25/83 VA to 2100 & Foothill.
5	Labor	4,260.00	8/25/83 36" line at 2100 East and Foothill was full of water, required dewatering. Existing flange out of plumb requiring restrained joint.
	Equip.	4,053.00	
		<u>8,313.00</u>	
6	Labor	9,542.40	8/30/83 encountered 6" water line 1'3" above flow line of our line, instructed by Milt Winward to go under. Next day bank caved in breaking water line. Decision then made to go over line.
	Equip.	10,320.00	
		<u>19,862.40</u>	
7	Labor	2,807.70	9/19/83 city ask crew to stop work for evaluation of Immigration Creek Crossing, then directed move back to 1300 S. 2100 E. and work to South.
	Equip.	3,650.50	
		<u>6,458.20</u>	
8	Labor	8,022.00	9/21/82 City directed crew to shut-down for 3 days, repaving of 2100 E. Library opening.
	Equip.	10,430.00	
		<u>18,452.00</u>	
9	Labor	2,470.80	10/10/83 repair crew not available from City to repair sewer line 1700 S. 2100 E. Columbus Day.
		3,337.50	
		<u>5,808.30</u>	
0	Labor	3,732.80	11/3/83 crew moved back to repair broken sewer. Sewer was mislocated by 12 feet.
	Equip.	4,450.00	
		<u>8,182.80</u>	
1	Labor	2,451.00	11/10/83 Joint #349 out of round Nevada and 2100 South.
		2,596.25	
		<u>5,047.25</u>	
2	Labor	1,486.50	11/14/83 water service not in location shown

Page Two

13	Labor	2,973.00	11/15/83 existing tie-in at Parleys Way
	Equip.	<u>3,337.50</u>	and Texas Street full of water. Had to
		6,310.50	be dewatered.
14	Labor	2,229.75	11/17/83 tie-in joint #374 3 feet too long
	Equip.	<u>2,503.13</u>	required cut to fit also City furnished
		4,732.88	gasket not available one had to be frabricated.
15	Labor	2,725.25	11/18/83 blind flange at Parleys Way and
	Equip.	<u>3,059.38</u>	Wilshire 2 feet out of location and 4 feet
		5,784.63	out of alignment.
16	Labor	1,776.00	12/2/83 hit existing 36 inch water line
	Equip.	<u>2,125.00</u>	6 1/2 feet out of location at Station 211+85.
		3,901.00	
		<u><u>122,949.81</u></u>	

Claim 1 & 2

Labor

Semi-skilled labor 3 men @ 16.10	
x 8 hours x 5 days	\$1,932.00
Mechanic 23.60 x 8 hours x 5 days	944.00
Superintendent 30.00 x 8 hours x 5 days	1,200.00
Engineer 23.60 x 8 hours x 5 days	944.00
Operator 23.60 x 8 hours x 5 days	944.00
	<hr/>
	5,964.00

Equipment

Pickup 4x4 2 x 13.00 x 8 hours x 5 days	1,040.00
Backhoe 70.00 x 8 hours x 5 days	2,800.00
Loader 40.00 x 8 hours x 5 days	1,600.00
	<hr/>
	5,440.00

Subcontractor

Claim 3

Labor

Semi-skilled labor 7 men @ 16.10 x 8	\$ 901.60
Driver 19.30 x 8	154.40
Operator 2 men @ 23.60 x 8	377.60
Foreman 2 men @ 25.70 x 8	411.20
Engineer 23.60 x 8	188.80
Superintendent 30.00 x 8	240.00
	<hr/>
	2,273.60

Equipment

Pickup 4x4 2 x 13.00 x 8 hours	\$ 208.00
Backhoe 70.00 x 8 hours	560.00
Loader 40.00 x 8 hours	320.00
Truck (Mech) 12.00 x 8 hours	96.00
Truck (Flatbed) 15.00 x 8 hours	120.00
Truck (Dump) 25.00 x 8 hours	200.00
Truck (Water) 25.00 x 8 hours	200.00
Pipelayer 75.00 x 8 hours	600.00
Compressor 12.00 x 8 hours	96.00
Mixer 3.00 x 8 hours	24.00
	<hr/>
	2,224.00

Claim 4

Labor

Superintendent 30.00 x 8	\$ 240.00
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Claim 10

Labor

Superintendent 30.00 x 8 hours	\$ 240.00
Engineer 23.60 x 8 hours	188.80
Foreman 3 men @ 25.70 x 8 hours	616.80
Operator 3 men @ 23.60 x 8 hours	566.40
Labor (semi-skilled) 15 men @ 16.10 x 8 hours	1,932.00
Mechanic 23.60 x 8 hours	188.80
	<hr/>
	3,732.80

Equipment

Pickup 4x4 3 @ 13.00 x 8 hours	\$ 312.00
Loader 2 @ 40.00 x 8 hours	640.00
Truck (Dump) 2 @ 25.00 x 8 hours	400.00
Truck (Water) 25.00 x 8 hours	200.00
Backhoe 35.00 x 8 hours	280.00
Tractor 50.00 x 8 hours	400.00
Compressor 8.75 x 8 hours	70.00
Mixer 3.00 x 8 hours	24.00
Backhoe 120.00 x 8 hours	960.00
Compactor 2 @ 8.75 x 8 hours	140.00
Trailer 2 @ 37.00 x 8 hours	592.00
Roller 38.00 x 8 hours	304.00
Sweeper 16.00 x 8 hours	128.00
	<hr/>
	4,450.00

Claim 11

Labor

Superintendent 30.00 x 5 hours	\$ 150.00
Engineer 23.60 x 5 hours	118.00
Foreman 3 men @ 25.70 x 5 hours	385.50
Operator 3 men @ 23.60 x 5 hours	354.00
Labor (semi-skilled) 15 men @ 16.10 x 5 hours	1,207.50
Mechanic 2 men @ 23.60 x 5 hours	236.00
	<hr/>
	2,451.00

Equipment

Pickup 4x4 3 @ 13.00 x 5 hours	\$ 195.00
Loader 2 @ 40.00 x 5 hours	400.00
Truck (Dump) 2 @ 25.00 x 5 hours	250.00
Truck (Water) 25.00 x 5 hours	125.00
Backhoe 35.00 x 5 hours	175.00
Tractor 50.00 x 5 hours	250.00
Compressor 8.75 x 5 hours	43.75
Mixer 3.00 x 5 hours	15.00
Backhoe 120.00 x 5 hours	600.00
Compactor 2 @ 8.75 x 5 hours	87.50
Trailer (Flatbed) 37.00 x 5 hours	185.00
Roller 38.00 x 5 hours	190.00
Sweeper 16.00 x 5 hours	80.00

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Claim 12

Labor

Superintendent 30.00 x 3 hours	\$ 90.00
Engineer 23.60 x 3 hours	70.80
Foreman 4 men @ 25.70 x 3 hours	308.40
Labor (semi-skilled) 14 men @ 16.10 x 3 hours	676.20
Operator 3 men @ 23.60 x 3 hours	212.40
Driver 19.30 x 3 hours	57.90
Mechanic 23.60 x 3 hours	70.80
	<u>1,486.50</u>

Equipment

Pickup 4x4 3 @ 13.00 x 3 hours	117.00
Loader 2 @ 40.00 x 3 hours	240.00
Truck (Dump) 2 @ 25.00 x 3 hours	150.00
Truck (Water) 25.00 x 3 hours	75.00
Backhoe 35.00 x 3 hours	105.00
Tractor 50.00 x 3 hours	150.00
Compressor 8.75 x 3 hours	26.25
Mixer 3.00 x 3 hours	9.00
Backhoe 120.00 x 3 hours	360.00
Compactor 2 @ 8.75 x 3 hours	52.50
Trailer (Flatbed) 2 @ 37.00 x 3 hours	222.00
Roller 38.00 x 3 hours	114.00
Sweeper 16.00 x 3 hours	48.00
	<u>1,668.75</u>

Claim 13

Labor

Superintendent 30.00 x 6 hours	\$ 180.00
Engineer 23.60 x 6 hours	141.60
Foreman 4 men @ 25.70 x 6 hours	616.80
Labor (semi-skilled) 14 men @ 16.10 x 6 hours	1,352.40
Operator 3 men @ 23.60 x 6 hours	424.80
Driver 19.30 x 6 hours	115.80
Mechanic 23.60 x 6 hours	141.60
	<u>2,973.00</u>

Equipment

Pickup 4x4 3 @ 13.00 x 6 hours	234.00
Loader 2 @ 40.00 x 6 hours	480.00
Truck (Dump) 2 @ 25.00 x 6 hours	300.00
Truck (Water) 25.00 x 6 hours	150.00
Backhoe 35.00 x 6 hours	210.00
Tractor 50.00 x 6 hours	300.00
Compressor 8.75 x 6 hours	52.50

Page Seven

Mixer 3.00 x 6 hours	18.00
Backhoe 120.00 x 6 hours	720.00
Compactor 2 @ 8.75 x 6 hours	105.00
Trailer (Flatbed) 2 @ 37.00 x 6 hours	444.00
Roller 38.00 x 6 hours	228.00
Sweeper 16.00 x 6 hours	96.00
	<u>3,337.50</u>

Claim 14

Labor

Superintendent 30.00 x 4.5 hours	\$ 135.00
Engineer 23.60 x 4.5 hours	106.20
Foreman 4 men @ 25.70 x 4.5 hours	462.60
Labor (semi-skilled) 14 men @ 16.10 x 4.5 hours	1,014.30
Operator 3 men @ 23.60 x 4.5 hours	318.60
Driver 19.30 x 4.5 hours	86.85
Mechanic 23.60 x 4.5 hours	106.20
	<u>2,229.75</u>

Equipment

Pickup 4x4 3 @ 13.00 x 4.5 hours	175.50
Loader 2 @ 40.00 x 4.5 hours	360.00
Truck (Dump) 2 @ 25.00 x 4.5 hours	225.00
Truck (Water) 25.00 x 4.5 hours	112.50
Backhoe 35.00 x 4.5 hours	157.50
Tractor 50.00 x 4.5 hours	225.00
Compressor 8.75 x 4.5 hours	39.38
Mixer 3.00 x 4.5 hours	13.50
Backhoe 120.00 x 4.5 hours	540.00
Compactor 2 @ 8.75 x 4.5 hours	78.75
Trailer (Flatbed) 2 @ 37.00 x 4.5 hours	333.00
Roller 38.00 x 4.5 hours	171.00
Sweeper 16.00 x 4.5 hours	72.00
	<u>2,503.13</u>

Claim 15

Labor

Superintendent 30.00 x 5.5 hours	\$ 165.00
Engineer 23.60 x 5.5 hours	129.80
Foreman 4 men @ 25.70 x 5.5 hours	565.40
Labor (semi-skilled) 14 men @ 16.10 x 5.5 hours	1,239.70
Operator 3 men @ 23.60 x 5.5 hours	389.40
Driver 19.30 x 5.5 hours	106.15
Mechanic 23.60 x 5.5 hours	129.80
	<u>2,725.25</u>

Equipment

Pickup 4x4 3 @ 13.00 x 5.5 hours	214.50
Loader 2 @ 40.00 x 5.5 hours	440.00
Truck (Dump) 2 @ 25.00 x 5.5 hours	275.00
Truck (Water) 25.00 x 5.5 hours	137.50
Backhoe 35.00 x 5.5 hours	192.50
Tractor 50.00 x 5.5 hours	275.00
Compressor 8.75 x 5.5 hours	48.13
Mixer 3.00 x 5.5 hours	16.50
Backhoe 120.00 x 5.5 hours	660.00
Compactor 2 @ 8.75 x 5.5 hours	96.25
Trailer (Flatbed) 2 @ 37.00 x 5.5 hours	407.00
Roller 38.00 x 5.5 hours	209.00
Sweeper 16.00 x 5.5 hours	88.00
	<u>3,059.38</u>

Claim 16

Labor

Superintendent 30.00 x 4 hours	\$ 120.00
Engineer 23.60 x 4 hours	94.40
Foremen 4 men @ 25.70 x 4 hours	411.20
Operator 3 men @ 23.60 x 4 hours	283.20
Labor (semi-skilled) 12 men @ 16.10 x 4 hours	772.80
Mechanic 23.60 x 4 hours	94.40
	<u>1,776.00</u>

Equipment

Pickup 4x4 3 @ 13.00 x 4 hours	156.00
Loader 2 @ 40.00 x 4 hours	320.00
Truck (Dump) 25.00 x 4 hours	100.00
Truck (Water) 25.00 x 4 hours	100.00
Backhoe 35.00 x 4 hours	140.00
Tractor 50.00 x 4 hours	200.00
Compressor 8.75 x 4 hours	35.00
Mixer 3.00 x 4 hours	12.00
Backhoe 120.00 x 4 hours	480.00
Compactor 2 @ 8.75 x 4 hours	70.00
Trailer 2 @ 37.00 x 4 hours	296.00
Roller 38.00 x 4 hours	152.00
Sweeper 16.00 x 4 hours	64.00
	<u>2,125.00</u>

DELAYS CAUSED BY EXTRA WELDS

1 Foreman	3 hours @ 25.70	\$ 77.10
1 Operator	3 hours @ 23.60	70.80
3 Laborors		
(semi-skilled)	3 hours @ 16.10	<u>144.90</u>
		292.80

Equipment:

Backhoe	3 hours @ 40.00	120.00
Compressor	3 hours @ 12.00	36.00
Wacker	3 hours @ 16.00	48.00
Truck (Dump)	3 hours @ 25.00	<u>75.00</u>
		279.00

\$571.80

\$571.80 x 52 extra welds \$29,733.60

Equipment Standby Time to December 2, 1983

	<u>Charged</u>	<u>Planned</u>	<u>Difference</u>	<u>Rate</u>	<u>Claim</u>
Pickup (3)	301	306	5	48.	240
Backhoe 225	90	102	12	640.	7,680
Backhoe 500C	75	102	27	171.	4,617
Loader 644 (2)	164	204	40	213.	8,520
Water Truck	67	102	35	133.	4,655
Rollers (3)	274	306	32	171.	5,472
Compactor (2)	80	204	124	85.	10,540
Flatbed Truck	31	102	71	96.	6,816
Dump Truck (2)	136	204	68	133.	9,044
Compressor (2)	106	204	98	64.	6,272
Grader Cat 14	68	102	34	293.	<u>9,962</u>
					<u>73,818</u>

Ortega/RU Construction

General Contractors, MBE,
P.O. Box 327, Bountiful, Utah 84010
Phone (801) 295-7902

George Ortega
General Manager
Werner A. Ruemmele
Chief Engineer

February 15, 1984

James Constructors
P.O. Box 25726
Salt Lake City, Utah 84125

Claims for Payment of Additional Work thru December 2, 1983

The Terminal Park Water Transmission Pipeline Extension, Project No. 35-4184 has suffered delays and setbacks that have caused Ortega/RU Construction additional work.

Ortega/RU Construction bid this Subcontract according to the time schedule of the General Contractor, based upon a pipeline-progress of 300 lft per working day and further based upon availability of owner furnished materials when required.

The work was to be completed during 1983. The concrete stations were to be built around installed pipe and fittings. The planned pace was to be about one new concrete station every other week. Personnel, equipment, form-panels and all other construction requirements were on hand when needed.

Actual progress was only about half of planned progress and owner-furnished materials were often not available when needed.

CLAIM NO. 1 - Moving Station Locations

Unknown subsurface conditions, a late start because of right-of-way problems and late deliveries of fittings, valves etc. to the owner caused the slow progress. These causes were beyond the control of the subcontractor. To mitigate the damages suffered, Ortega/RU Construction had to construct six of ten stations prior to pipe installation. Three of these stations were formed as staked by the City, but just before placing the concrete, directions were given to move the forms, rebar and base gravel by several feet to accommodate line changes. The cost of this additional work is as tabulated:

1-1. Move 5th S./Guardsm. V-Sta	1,710.77
1-2. Move T.P. Res. two stations	2,472.66

Sunnyside Ave. Station had to be turned around and re-excavated

Claims for Payment of Additional Work Continued

because of interference by a sewer line; and the sewer had to be replaced by a ductile iron line:

1-3. Sunnyside, re-excavate, replace sewer	4,156.94	
<u>TOTAL CLAIM NO. 1</u>		\$ 8,340

CLAIM NO. 2 - Blockouts in Station Walls

Round Blockouts were installed at 5th S. Valve Station (3 ea.), 5th S. Brick Cond. Station (2 ea.), Sunnyside (1 ea.), 13th S/21 E (3 ea.), Terminal Park Valve Station (2 ea.) and Meter Station (2 ea.). These 13 Blockouts cost:

2-1. Blockouts @163.24 13 ea.	2,122.12
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After the pipe installation, so far only two have been dry-packed around the pipe collar:

2-2. Drypack around pipe 3 ea. @124.28	372.84	
<u>TOTAL CLAIM NO. 2</u>		2,494

CLAIM NO. 3 - Excessive Fixed Cost for Equipment, Office, Yard

The project was started by Subcontractor in July 1, 1983 and only 63% completed on December 2, 1983. Of the 140 Calendar days worked, only 88 (or 63%) can be considered as required if the progress had been as anticipated. The balance of 52 calendar days is excessive time for fixed cost of general equipment ownership, overhead and other fixed costs. For crane ownership the respective time was from Sept. 26, 1983 thru Dec. 2, 1983, for 68 calendar days actual, 43 calendar days required to do the work, or 25 calendar days excessive time. The excessive fixed costs are tabulated on the basis of 305 hours for general equipment, yard and office and 146 hours for the crane.

3-1. General Equipment	2,531.50	
3-2. Form Panels and Hardware	1,917.19	
3-3. 45 Ton Truck-Crane	14,595.62	
3-4. Yard and Office	<u>1,903.00</u>	
<u>TOTAL CLAIM NO. 3</u>		20,947

CLAIM NO. 4 - Owner-furnished Materials

Subcontractor was required to purchase materials which were to be Owner furnished according to Addendum No. 1 of the Contract.

4-1. See tabulation

<u>TOTAL CLAIM NO. 4</u>	<u>6,912</u>
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TOTAL CLAIMS thru December 2, 1983

\$38,694

119

Extra Work - December 2, 1983 to February 19, 1984

\$ 1,829.17	12/6/83 - Sewer lateral repair 1407 South 2100 East due to insufficient clearance of water line.
1,380.74	12/7/83 - Filled sinkholes Foothill and 2100 East, 1300 South 2100 East, 2100 East between 1300 South and 1700 South, 1700 South and 2100 East, Wilson and 2300 East, Redondo and 2300 East.
1,991.13	12/9/83 - Extended crossing at Redondo and 2300 East, excavated saturated fill between 95+00 and 97+00 and replaced with import.
47.20	12/14/83 - Cleaned gutters 2100 East and 2300 East.
2,027.93	12/16/83 - Cold patched approximately 75 feet at St. Marys and 2100 East.
840.90	12/19/83 - Pumped structure at 1300 South and excavated sewer line at 2195 East Wilson.
611.48	12/20/83 - Finished excavating for sewer crushed due to insufficient clearance of water line.
4,302.71	12/21/83 - Cold patched 2100 South and Nevada, 1700 South and 2100 East, Wilson and 2300 East, Redondo and 2300 East and barricade rental.
1,128.80	12/22/83 - Select fill to 1492 South 2100 East and 1350 South 2100 East and snow removal Parleys Way.
352.50	12/24/83 - Snow removal Parleys Way.
300.00	12/29/83 - Snow removal for city crew.
707.40	1/10/84 - Cold patched Foothill and 2100 East, Yale and 2100 East, Redondo and 2300 East, 2100 South and Nevada and ice removal 1300 South and 2100 East.
352.50	1/13/84 - Pumped structure at 1300 South for city inspection.
300.00	1/17/84 - Pulled city valve truck to 36" valve.
1,304.91	1/23/84 - Cold patched Foothill and 2100 East, Redondo and 2300 East, 2100 South to Texas and part of Texas.
586.30	1/24/84 - Cold patched Foothill and 2100 East, Redondo and 2300 East, 2100 South and Nevada and Texas.

Page Two

1,493.00	1/27/84 - Cold patched 1300 South and 2100 East, 1322 South 2100 East, 1400 South 2100 East and between Stations 134+00 and 137+00.
1,000.90	2/2/84 - Cold patched 1700 South and 2100 East, Redondo and Nevada, 2300 East 1900 South and chuck holes on 2100 East.
160.80	2/9/84 - Sandbagged at 500 South to protect bank.
948.80	2/15/84 - Cold patched Redondo and 2300 East and sink and chuck holes.
<u>559.24</u>	2/16/84 - Cold patched at 1700 South 2100 East and Foothill and 2100 East.
<u>\$22,315.50</u>	

December 6, 1983

Labor

Foreman 2 x 25.70 x 8	\$ 411.20
2 x 38.55 x 1/2	38.55
Mechanic 23.60 x 8	188.80
35.40 x 1/2	17.70
Labor (semi-skilled) 16.10 x 8	128.80
24.15 x 1/2	12.08
Driver 18.20 x 8	145.60
27.30 x 1/2	13.65
	<hr/> 956.38

Equipment

Backhoe 32.00 x 8.5	272.00
Loader 40.00 x 8.5	340.00
Truck (Dump) 25.00 x 8.5	212.50
	<hr/> 824.50

Material

10' of 4" Cast Iron @ 3.69/ft	36.90
2-4" Cast to Clay Couplers @ 5.69	11.38
	<hr/> 48.28

\$1,829.16

December 7, 1983

Labor

Driver 18.20 x 8	\$ 145.60
27.30 x 2	54.60
Labor (semi-skilled) 16.10 x 8	128.80
24.15 x 2	48.30
Mechanic 23.60 x 8	188.80
35.40 x 2	70.80
	<hr/> 636.90

Equipment

Truck (Dump) 25.00 x 10	250.00
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Material

14.15 tons cold mix @ 34.90	<hr/> 493.84
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\$1,380.74

December 9, 1983

Labor

Driver 18.20 x 8	\$ 145.60
27.30 x 2.5	68.25
Labor 16.10 x 8	128.80
24.15 x 2.5	60.38
Foreman 25.70 x 8	205.60
	<hr/> 608.63

Equipment

Truck (Dump) 25.00 x 10.5	252.50
Backhoe 32.00 x 8	256.00
2 contract trucks @ 54.00 x 8	864.00
	<hr/> 1,382.50

\$1,991.13

December 14, 1983

Labor

Engineer 23.60 x 2	\$ 47.20
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December 16, 1983

Labor

Superintendent 30.00 x 8	\$ 240.00
45.00 x 1	45.00
Driver 18.20 x 8	145.60
27.30 x 1	27.30
Labor (semi-skilled) 16.10 x 8	128.80
24.15 x 1	24.15
	<hr/> 610.85

Equipment

Loader 40.00 x 9	360.00
Truck (dump) 25.00 x 9	225.00
Trailer (flatbed) 18.00 x 9	162.00
	<hr/> 747.00

Material

19.2 tons cold mix @ 34.90	670.08
	<hr/> \$2,027.93

December 19, 1983

Labor

Superintendent 30.00 x 8	\$ 240.00
Labor (semi-skilled) 2 x 16.10 x 8	257.60
Engineer 23.60 x 8	188.80
	<hr/> 686.40

Equipment

3" Water pump 6.00 x 2	12.00
Backhoe 32.00 x 2.5	80.00
Truck (dump) 25.00 x 2.5	62.50
	<u>154.50</u>
	\$ 840.90

December 20, 1983

Labor

Superintendent 30.00 x 4	\$ 120.00
Foreman 25.70 x 4	102.80
Labor (semi-skilled) 16.10 x 4	64.40
	<u>287.20</u>

Equipment

Backhoe 32.00 x 4	128.00
Truck (dump) 25.00 x 4	100.00
Compressor 12.00 x 4	48.00
	<u>276.00</u>

Material

10' of 4" Cast iron pipe @ 3.69/ft.	36.90
2-4" cast to clay couples @ 5.69	11.38
	<u>48.28</u>
	\$ 611.48

December 21, 1983

Labor

Superintendent 30.00 x 8	\$ 240.00
Labor (semi-skilled) 16.10 x 8	128.80
Engineer 23.60 x 8	188.80
	<u>557.60</u>

Equipment

Loader 40.00 x 8	320.00
Truck (dump) 25.00 x 8	200.00
	<u>520.00</u>

Material

Cold mix 27.25 tons @34.90	951.03
Barricade Rental	2,274.08
	<u>3,225.11</u>
	\$4,302.71

December 22, 1983

Labor

Superintendent 30.00 x 8	\$ 240.00
Labor (semi-skilled) 16.10 x 8	128.80
	<hr/> 368.80

Equipment

14-Patrol 55.00 x 8	440.00
Loader 40.00 x 8	320.00
	<hr/> 760.00

\$1,128.80

December 24, 1983

Labor

Superintendent 30.00 x 3	\$ 90.00
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Equipment

14-Patrol 55.00 x 1.5	82.50
Backhoe 120.00 x 1.5	180.00
	<hr/> 262.50

\$ 352.50

December 29, 1983

Labor

Superintendent 30.00 x 2	\$ 60.00
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Equipment

Backhoe 120.00 x 2	240.00
	<hr/>

\$ 300.00

January 10, 1984

Labor

Superintendent 30.00 x 4	\$ 120.00
Labor (semi-skilled) 16.10 x 4	64.40
Engineer 23.60 x 4	94.40
	<hr/> 278.80

Equipment

Backhoe 32.00 x 4	128.00
Flatbed dump 18.00 x 4	72.00
	<hr/> 200.00

Material

Cold mix 6.55 tons @ 34.90	228.60
	<hr/>

\$ 707.40

January 13, 1984

Labor

Superintendent 30.00 x 3	\$ 90.00
Foreman 25.70 x 3	77.10
Labor (semi-skilled) 2 x 16.10 x 3	96.60
Engineer 23.60 x 3	70.80
	<hr/> 334.50

Equipment

3" water pump 6.00 x 3	<hr/> 18.00
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\$ 352.50

January 17, 1984

Labor

Superintendent 30.00 x 2	\$ 60.00
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Equipment

Backhoe 120.00 x 2	<hr/> 240.00
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\$ 300.00

January 23, 1984

Labor

Superintendent 30.00 x 8	\$ 240.00
Engineer 23.60 x 8	188.80
Labor (semi-skilled) 16.10 x 8	128.80
	<hr/> 557.60

Equipment

Backhoe 32.00 x 8	256.00
Truck (dump) 25.00 x 8	200.00
	<hr/> 456.00

Material

Cold mix 10.9 tons @ 34.90	<hr/> 380.41
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\$1,394.01

January 24, 1984

Labor

Superintendent 30.00 x 5	\$ 150.00
Labor (semi-skilled) 16.10 x 5	80.50
Engineer 23.60 x 3	70.80
	<hr/> 301.30

Equipment

Truck (dump) 25.00 x 5	125.00
Backhoe 32.00 x 5	160.00
	<hr/> 285.00

January 27, 1984

Labor

Superintendent 30.00 x 5	\$ 150.00
Labor (semi-skilled) 16.10 x 5	80.50
Engineer 23.60 x 5	118.00
	<hr/> 348.50

Equipment

Truck (dump) 25.00 x 5	125.00
14-Patrol 55.00 x 5	275.00
Backhoe 32.00 x 5	160.00
	<hr/> 560.00

Material

Cold mix 6.75 tons @ 34.90	<hr/> 584.50
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\$1,493.00

February 2, 1984

Labor

Superintendent 30.00 x 7	\$ 210.00
Labor (semi-skilled) 16.10 x 7	112.70
	<hr/> 322.70

Equipment

Backhoe 32.00 x 7	224.00
Truck (dump) 25.00 x 7	175.00
	<hr/> 399.00

Material

Cold mix 8.00 tons @ 34.90	<hr/> 279.20
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\$1,000.90

February 9, 1984

Labor

Superintendent 30.00 x 3	\$ 90.00
Engineer 23.60 x 3	70.80
	<hr/>

\$ 160.80

February 15, 1984

Labor

Superintendent 30.00 x 6	\$ 180.00
Engineer 23.60 x 6	141.60
	<hr/> 321.60

Equipment

Flatbed 18.00 x 6

108.00

Loader 40.00 x 6

240.00

348.00

Material

Cold mix 8 tons @ 34.90

279.20

\$ 948.80

February 16, 1984

Labor

Superintendent 30.00 x 4

\$ 120.00

Engineer 23.60 x 4

94.40

214.40

Equipment

Backhoe 32.00 x 4

128.00

Flatbed dump 18.00 x 4

72.00

200.00

Material

Cold mix 4.15 tons @ 34.90

144.84

\$ 559.24

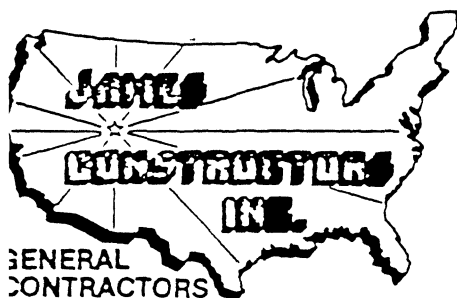
\$22,315.50

Equipment Standby Time - December 2, 1983 to February 19, 1984

	<u>Charged</u>	<u>Planned</u>	<u>Difference</u>	<u>Rate</u>	<u>Claim</u>
Pickup (3)	-	126	126	48.	6,048
Backhoe 225	2	42	40	640.	25,600
Backhoe 500C	13	42	29	171.	4,959
Loader 644 (2)	5	84	79	213.	16,827
Water Truck	-	42	42	133.	5,586
Flatbed Truck	2	42	40	96.	3,840
Dump Truck (2)	15	84	69	133.	9,177
Compressor (2)	-	84	84	64.	5,376
Grader Cat 14	5	42	37	293.	10,841
					<u>\$88,254</u>

Key Personnel Standby Time-December 2, 1983 to February 19, 1984

R. Washburn	80 hours	@	\$30.00	\$ 2,400.00
B. Erickson	80-16 = 4	hours @	25.70	1,644.80
B. Erickson	344-84 = 260	hours @	30.00	7,800.00
A. Hart	424-50 = 374	hours @	23.60	<u>8,826.40</u>
				<u>\$20,671.20</u>



P.O. Box 25726-84125
3765 West 2100 South
Salt Lake City, Utah 84120
(801) 973-9212

February 10, 1984

COPY

Salt Lake City Corporation
Engineering Division
Room 401, City & County Building
Salt Lake City, UT 84111

ATTENTION: Max G. Peterson P.E.
City Engineer

Dear Mr. Peterson

First let me take the opportunity to thank you and your staff for the time during the meeting February 10, 1984, discussing restart of the Big Cottonwood Conduit Extension Terminal/Park Transmission Pipeline. As a result of this meeting and your direction, James Constructors, Inc. will accomplish the following subject to authorization by Mr. Tim Doney for James Constructors to use imported backfill, contract item 42.

James Constructors will restart construction at approximately Station 211 + 00 and work to Station 219 + 21, the tie-in to the existing 48 inch line. This restart will be February 14, 1984 or as soon thereafter as weather permits. At the end of each day, or on week-ends, no more than 20 feet of trench will be left uncovered. The trench on Parleys Way Frontage Road will be given a permanent surface when weather permits.

Simultaneously, areas of concern by the City Engineers' Office will be repaired again using imported backfill contract item 42 per Mr. Doney's approval. These areas include 2100 East between 1200 South and 1500 South, 2100 East and Wilson (1788 South), 2300 East between Wilson and Redondo, and the manhole at 2325 East 2000 South.

James Constructors will then move back to approximately Station 25 + 00 and proceed to Foothill Drive and Sunnyside Avenue. Your office will be advised prior to crossing Sunnyside Avenue per your instructions.

Page Two

We appreciate and agree with your comment that many of the problems we have experienced in the past on this project, will be avoided in the future if James Constructors receives timely comments and decisions from the city.

Again, thank you for your time and consideration. If you have any questions, please contact the undersigned.

Yours very truly

A handwritten signature in black ink, appearing to read "Ronald B. Smith". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald B. Smith
Contract Administrator

dt

cc: Tim Doxey

EXHIBIT 3

any and all facts and identify any and all documents or communications upon which the defendant bases the allegations set forth in paragraph 14 of its verified complaint that SLCC has failed to negotiate defendant's claim for extra work in good faith.

ANSWER: Salt Lake City has never given a response to James as to why they will not pay the claim for extra work. James believes that Salt Lake City acted in bad faith by deciding to remove James from the job rather than honor the claim for extra work. The decision to remove James from the job was made prior to and regardless of James' efforts to cure any alleged deficiencies in the contract work.

INTERROGATORY NO. 64: Please set forth with specificity any and all facts and identify any and all documents or communications upon which defendant bases its claim for extra expenses on the SLCC project as set forth in paragraph 14 of defendant's verified complaint.

ANSWER: Attached as Exhibit 2 to these Answers are the following documents:

a) Letter dated February 10, 1984, from James to the City Engineer;

b) Letter dated February 16, 1984, from James to the Public Utilities Department;

c) Letter dated March 7, 1984, from James to the Public

Utilities Department; and

d) Letter dated March 16, 1984, from James to the Public Utilities Department.

The attached exhibits set forth all itemizations for extra work claimed.

INTERROGATORY NO. 65: Please set forth with specificity and detail an itemization of the amount used in arriving at the figure of \$526,843.08 as alleged extra expenses set forth in paragraph 14 of defendant's verified complaint.

ANSWER: See answer to Interrogatory 64.

INTERROGATORY NO. 66: Please set forth with specificity any and all facts and all documents or communications upon which defendant bases its answer to Interrogatory No. 65.

ANSWER: See answer to Interrogatory 64.

INTERROGATORY NO. 67: Please state whether defendant's contention that SLCC's actions were the cause of any extra expenses allegedly incurred by defendant on the SLCC project, and if so, please set forth with specificity any and all facts and identify any and all documents or communications upon which defendant bases such contention.

ANSWER: See answer to Interrogatory 64.

INTERROGATORY NO. 68: Please state with specificity any and all facts and identify any and all documents or communications on which defendant bases its allegations set forth in paragraph 15

EXHIBIT 4

12. Set forth the amount which you contend James would have expended in completing the remaining portion of the pipe line project and identify all documents and set forth all facts upon which you base such amount.

ANSWER: James is unable to respond to this interrogatory in that any such response involves speculation. Variables which developed leading to cessation of work all affect future costs which would have been involved to have completed the project.

13. Set forth the amount which you content James would have expended in correcting defects in the project worked on by James and identify all documents and set forth all facts upon which you base such amount.

ANSWER: Refer to answer to Interrogatory 12.

14. Set forth the amount of profit realized by James Constructors on that portion of the subject pipe-line project worked on by James Constructors as of April 16, 1984 and identify all documents and set forth all facts upon which you base such amount.

ANSWER: None.

15. Set forth the amount of any lost profits which James claims in this lawsuit as a result of the termination of James from the subject pipe line project and identify all documents and set forth all facts upon which you base such amount.

ANSWER: Refer to claims submitted by James to Salt Lake City. Copies of said claims are attached to the previous Answers to Interrogatories. The amount set forth in the claim delineates reimbursement of costs and lost profits.

16. State whether James or Industrial claim or allege that any of the bedding and/or backfill materials used in the subject pipeline and construction project were suitable for use under the specifications of the project and state the times, dates and specific locations on the project where such materials were used.

ANSWER: James and Industrial claim that bedding and backfill materials are suitable at such locations where import materials were used. Said locations have been previously identified for Salt Lake City.

17. State whether James or Industrial claim that James should have used any import material for bedding and/or backfill in the pipeline, and if so, state the times, dates and specific locations on the project when such materials should have been used and whether or not import materials were used at each such location.

ANSWER: James and Industrial claim that import bedding and backfill material should have been used throughout the entire pipeline. This is evidenced by the fact that all restoration work included import bedding and backfill material throughout the entire pipeline project.

EXHIBIT 5

James Constructors, Inc. ("James") hereby amends its answer to Interrogatory No. 53 of Salt lake City's First Set of Interrogatories as follows:

Interrogatory No. 53: Please state whether James Constructors used any materials for bedding or backfill which were not suitable for such use under the contract specifications and describe the circumstances for such use.

Objection: This interrogatory calls for a legal conclusion.

Answer: Yes. The bulk of the natural soil excavated during the construction was classified CL. This soil is fine grained. More than 50% by weight passes through a No. 200 size sieve. Fine grained silts, sands and clays are generally unsuitable for use as bedding and/or backfill. This material was encountered and used by James throughout the construction site on the express instructions of the Salt lake City engineer or his authorized representative to do so.

DATED this 1 day of June, 1987.

CHRISTENSEN, JENSEN & POWELL, P.C.

By 

Elwood P. Powell

C. REED BROWN, P.C.

By 

C. Reed Brown

Attorneys for James Constructors