



Albuquerque Bernalillo County
Water Utility Authority

General Terms and Conditions
for
Construction Contracts

Revised, Effective 5/1/2024

General Terms and Conditions
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SECTION 1 - Definitions and Terms

1.1 General

Whenever used in these General Terms and Conditions or in the Bid, RFP or Contract Documents, the following abbreviations, symbols and defined terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.2 Abbreviations

Wherever the following abbreviations or symbols are used, they are to be construed the same as the respective expressions represented:

AASHTO	American Association of State Highway and Transportation Officials
ABC	Aggregate Base Course
AC	Asphalt Concrete
ACI	American Concrete Institute
ACNM	Associated Contractors of New Mexico
ACP	Asbestos Cement Pipe
ACPA	American Concrete Pipe Association
AD	Assessment District
AGC	Associated General Contractors of America, Inc.
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AMAFCA	Albuquerque Metropolitan Arroyo Flood Control Authority
ANSI	American National Standards Institute
APWA	American Public Works Association
AREA	American Railway Engineers Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
Asph	Asphalt
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge (Nonferrous Wire)
AWPA	American Wood Preservers Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BC	Beginning of Curve or Back of Curb
BCR	Beginning of Curve Return or Back of Curb Radius
BM	Bench Mark
BTB	Bituminous Treated Base
BWG	Birmingham Wire Gauge (Iron and Steel Wire)
C.C. or C/C	Center to Center
Cem	Cement
CF	Curb Face
CI	Cast Iron
CIP	Cast-Iron Pipe or Complete in Place
CIPP	Cast-in-Place Pipe
C.L. or CL	Center Line
CMP	Corrugated Metal Pipe
CMPA	Corrugated Metal Pipe Arch
CO	Clean Out
Col	Column
Conc	Concrete
Const	Construct

cy	Cubic Yard(s)
DF	Douglas Fir
DG	Decomposed Granite
DIA	Diameter
DIP	Ductile Iron Pipe
DMH	Drop Manhole
D/W	Driveway
EA	Each
EC	End of Curve
EL. or Elev.	Elevation
EMD	Electronic Marker Device
Ex. or Exist.	Existing
F & C	Frame and Cover
f' c	Design Compressive Strength of Portland Cement Concrete
f	Minimum Critical Compressive Strength (.85f'c)
FH	Fire Hydrant
FJ	Flanged Joint
FL	Flow Line
FL. EL	Floor Elevation
FS	Federal Specifications of Finished Surface
FHWA	Federal Highway Administration, Department of Transportation
Galv	Galvanized
GL	Ground Line
Gr	Grade
H	Height or High
HC	House Connection Sewer
hor	Horizontal
id	Inside Diameter
Inv	Invert
IP	Iron Pipe
ITE	Institute of Traffic Engineers
LB	Pound(s)
LF	Linear Feet (Foot)
Lin	Linear
LL	Liquid Limit
Long	Longitudinal
LS	Lump Sum
M	Thousand
m	meter or middle
max	Maximum
MH	Manhole
MJ	Mechanical Joint
min	Minutes or Minimum
Mon	Monolithic or Monument
MRGCD	Middle Rio Grande Conservancy District
MTD	Multiple Tile Duct
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NMDOT	New Mexico Department of Transportation
NMSA	New Mexico Statutes Annotated--1978 Compilation as Amended
OC	On Center
Od	Outside Diameter
OSHA	Occupational Safety and Health Administration

PC	Point of Curvature
PCC	Point of Compound Curve or Portland Cement Concrete
PG	Performance Grade
PI	Point of Intersection or Plasticity Index
PL	Property Line or Plastic Limit
PP	Power Pole
ppm	Parts per Million
PRC	Point of Reverse Curve
Prop	Proposed or Property
PRV	Pressure Reducing Valve
psf	Pounds per Square Foot
psi	Pounds per Square Inch
PT	Point of Tangency
Pvmt	Pavement
PVC	Polyvinyl Chloride
PVCO	Molecular Oriented Polyvinyl Chloride
PVCP	Polyvinyl Chloride Pipe
Q	Rate of Flow
QAC	Quiet Asphalt Concrete
r	Radius
RC	Reinforced Concrete
RCP	Reinforced Concrete Pipe
Rdwy	Roadway
Ret. Wall	Retaining Wall
RGRCP	Rubber Gasket-Reinforced Concrete Pipe
R/W	Right-of-Way
s	Slope
SAE	Society of Automotive Engineers
San.	Sanitary
SCCP	Steel Cylinder Concrete Pipe
SD	Storm Drain
Sdl	Saddle
Sect	Section
sf	Square Feet (Foot)
Spec	Specifications
Sp. MH	Special Manhole
San. S	Sanitary Sewer
SP	Superpave Aggregate Gradation
ST	Street
Sta	Station
Std	Standard
SY	Square Yard(s)
T	Tangent Distance
TCS	Traffic Control Supervisor
TCT	Traffic Control Technician
TH	Test Hole
TMH	Trap Manhole
UL	Underwriters' Laboratories, Inc.
USA	United States of America Standards Institute, Inc.
V	Velocity
VC	Vertical Curve
VCP	Vitrified Clay Pipe
VCPI	Vertical Curve Point of Intersection
Vert	Vertical
VF	Vertical Feet (Foot)
VSF	Vertical Square Feet (Foot)

1.3 AISC Abbreviations and Symbols

All abbreviations and symbols used on plans for structural steel construction shall conform to those given in the Steel Construction Manual of the American Institute of Steel Construction.

1.4 Definitions

Addenda or Addendum - Any written changes, revisions or clarifications to the Bid Documents for a Request for Bids (RFB) for construction or Request for Proposals (RFP) for on-call construction services.

Agreement - The written Agreement between OWNER and CONTRACTOR which establishes the terms of the Contract and which incorporates all Contract Documents. The Agreement shall be on the form contained in the Bid Documents or RFP. No Agreement shall be valid until signed by a person duly authorized to bind the CONTRACTOR and the Executive Director of the Water Authority or his designee.

Application for Payment - The form which is to be used in requesting progress payments, or a single payment if only one will be paid for the Project, and which includes, if applicable, the Schedule of Values.

Bid - The term used in an RFB for construction and herein to describe the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed; also referred to as the Bid Proposal.

Bidder - Any person, firm, or corporation submitting a Bid for the Work of an RFB for construction.

Bid Documents – The Request for Bids (RFB), including the Advertisement for Bids, the Instructions to Bidders, the Special Instructions, the Bid Proposal Instructions and Forms, the Agreement, the Wage Rate Decision, these General Terms and Conditions, the Referenced Standard Specifications, all forms, checklists and instructions, and the Project Technical Specifications, Drawings and other documents attached.

Bid Proposal - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed; also referred to as the Bid.

Board - The governing body of the OWNER.

Bond – A bid or proposal bond, performance bond, or labor and material payment bond or other instrument of security, furnished by CONTRACTOR and its surety in accordance with the Contract Documents.

Change Order - A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work (or, if applicable, an adjustment in the Contract Price or the Contract Time) issued after execution of the Agreement. The term as used herein also refers to a Work Order Adjustment.

CONSULTANT – An agent or licensed professional with whom OWNER has entered into an agreement, who is responsible for the engineering, surveying, architectural, and/or landscape architectural design or construction contract administration and inspection or both, acting directly or through duly authorized representatives. If OWNER has not contracted with a CONSULTANT, OWNER’S employee(s) will perform the services of the CONSULTANT.

Contract Documents or Contract – The terms and conditions agreed to by a CONTRACTOR and OWNER as a result of an RFB for construction or an RFP for on-call construction services and

which incorporates multiple documents. When resulting from an RFB for construction, the Contract Documents include: the Agreement, CONTRACTOR'S approved Shop Drawings, CONTRACTOR'S Bid Proposal (to the extent approved by OWNER), the Bid Documents and Addenda. When resulting from an RFP for on-call construction services, the Contract Documents include: the Agreement, the Prequalified Contractor's Proposal, (to the extent approved by OWNER), the RFP Documents and Addenda. Also made a part of the Contract Documents are the bonds and insurance certificates provided by the CONTRACTOR, the forms completed and signed by the CONTRACTOR, and any later Modifications to the Contract. If the Prequalified Contractor is assigned a Work Order Project, the executed Work Order Documents also become a part of the Contract Documents.

Contract Price - The total monies payable to CONTRACTOR under the Contract Documents, which amount includes any applicable New Mexico Gross Receipts Taxes.

Contract Term – The term used in an RFP for on-call construction services and herein which establishes the time the Contract remains in effect and during which the CONTRACTOR may initiate a Work Order for construction services.

Contract Time – The term used in an RFB for construction or in a Work Order resulting from an RFP for on-call construction services which establishes the number of days stated in the Contract Documents for the completion of the Work and Punch List items, computed as provided in Section 25.2.

CONTRACTOR - A person, firm, or corporation with whom OWNER has executed the Agreement as a result of an RFB for construction or, for an RFP for on-call construction services.

County – Bernalillo County, New Mexico.

Day – The term “day” shall mean a calendar day of twenty-four hours measured from midnight to the next midnight.

Debarment - Debarment of a contractor means denial of the right to bid or offer to enter into a contract for a specified period of time by the Water Authority, or any federal agency, or State agency or local public body of the State of New Mexico.

Defective - When modifying the word Work, this term refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval to which the Contract Documents refer, and specifically includes Work that has been damaged prior to the CONSULTANT'S recommendation of final payment and acceptance (pursuant to Section 14.10). The terms Defect and Defective Work shall apply to the Work, whether such Defect is identified or otherwise discovered at or prior to final payment and acceptance (pursuant to Section 14.10) or during any correction period described in Section 13.7 of these General Terms and Conditions.

Drawings - The drawings or plans contained in an appendix to the Bid Documents or a Work Order which show the character and scope of the Work to be performed and which have been prepared or approved by the CONSULTANT; also referred to as Plans.

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

Field Order - A written order issued by CONSULTANT which clarifies or interprets the Contract Documents in accordance with Section 9.4 or orders minor changes in the Work in accordance with Section 10.2.

General Terms and Conditions – These contractual terms and conditions which apply to all construction projects and which may be modified by Bid Documents, an RFP, Addenda, or Modifications to the Contract.

Modification - (a) A written amendment to the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A Modification may only be issued after execution of the Agreement.

Notice of Award - The written notice by OWNER to Bidder that it has submitted the apparent low successful Bid or by OWNER to Offeror that it has submitted a successful Proposal and that, upon compliance by the Bidder or Offeror with the conditions precedent to be fulfilled within the time specified, the OWNER shall prepare and deliver the Agreement to the Bidder or Offeror in the event the OWNER elects to proceed to execute the Agreement. Issuance of the Notice of Award does not create a contractual relationship between OWNER and Bidder or OWNER and Offeror.

Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to CONSULTANT) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform its obligations under the Contract Documents. The Notice to Proceed may be executed by means of a purchase order.

Offer -- The term used in an RFP for on-call construction services and herein to describe the bid or proposal of a Prequalified Contractor submitted on the prescribed form in response to a Request for Offers.

Offeror -- Any person, firm, or corporation submitting a Proposal in response to an RFP for on-call construction services.

On-Call Contract – The Contract resulting from an RFP for On-Call Construction Services.

OWNER - The Albuquerque Bernalillo County Water Utility Authority, or Water Authority, for whom the Work is to be performed.

Prequalified Contractor – A CONTRACTOR with whom OWNER has executed a Contract as a result of an RFP for on-call construction services.

Procurement Ordinance -- The Bernalillo County Procurement Ordinance which the Water Authority has adopted, pursuant to the powers granted in Section 72-1-10 NMSA 1978, to govern all purchasing transactions of the Water Authority; as currently enacted or hereafter amended.

Project – The construction to be performed at a single site or multiple sites as provided in the Contract Documents. In an RFB for construction and herein this term describes the entire construction to be performed. In an RFP for on-call construction services it describes the entire construction to be performed pursuant to a single Work Order.

Project Technical Specifications – The written technical descriptions of the materials, equipment, construction systems, standards, and workmanship for the Project contained in an appendix to the Bid Documents or a Work Order.

Proposal -- The term used in an RFP for on-call construction services to describe the offer or proposal of the Offeror submitted on the prescribed form, setting forth the Offeror's qualifications.

Punch List – A list of items prepared by CONSULTANT to be completed or corrected following CONSULTANT'S certification of Substantial Completion and before final payment.

Referenced Standard Specifications – All standard specifications applicable to the Work as identified in the Bid or RFP Documents (Part II, Special Instructions) and any supplements to those standard specifications attached to or referenced in the Bid or RFP Documents.

Request for Offers – A solicitation from OWNER to Prequalified Contractors to submit Offers for a Project described therein.

RFP Documents – The RFP, including the Advertisement for Proposals, the Instructions to Offerors, the Special Instructions, the Proposal Instructions and Forms, the Agreement, the General Terms and Conditions, the Referenced Standard Specifications, all forms, checklists and instructions, and the Description of Services and Work Order Instructions and Forms and other documents attached.

Rules – The Rules Governing Procurement for the Albuquerque Bernalillo County Water Utility Authority, as currently enacted or hereafter amended.

Schedule of Values - A breakdown with documentation of the material and labor costs of all major components of a Project or a Bid or Offer item that is bid or offered at a lump sum or unit price.

Service Connection –All or any portion of the pipe, conduit, cable, or duct which connects a utility main or distribution line to a building, home, residence, or property, also referred to as service line connection.

Shop Drawings - All Drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by CONTRACTOR, a Subcontractor, manufacturer, supplier, or distributor and which illustrate the equipment, material, or some portion of the Work.

Single Project Contract – The Contract Documents resulting from an RFB for construction.

Site – The area or location of the Project identified by the OWNER in the Contract Documents and where the CONTRACTOR will perform the Work.

Specifications -- Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work, including all Project Technical Specifications and Drawings attached to the Bid or a Work Order, the Referenced Standard Specifications and all other technical specifications, test methods and applicable codes of any society, association, or organization referred to in the Bid or RFP Documents or a Work Order. The Specifications are made a part of the Bid or RFP Documents the same as if written in full therein. Any reference to a paragraph or subsection within a Section shall include all general provisions of the Section to which reference is made. Unless otherwise specified in the Contract Documents, reference to such specifications or standards refers to the latest published issue as of the first date of publication of the Advertisement for Bids or Proposals, whichever applies. Reference to local, state or federal codes and laws shall mean the latest adopted and published codes as of the first date of publication of the Advertisement for Bids or Proposals, whichever applies.

Subcontractor - An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other subcontractor for the performance of a part of the Work at the Site.

Substantial Completion - The date as certified by CONSULTANT when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there is no such certification, the date when final payment is due in accordance with Section 14.10.

Utility –A system of overhead or underground wires, pipe lines, conduits, ducts, or structures, operated and maintained in or across a public right-of-way or easement or private easement or property or lands.

public utility – A utility owned and operated by a municipality or another political subdivision of the State.

private utility – A utility owned and operated by a private company or corporation.

Work - Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by CONTRACTOR under the Contract Documents, including all labor, materials, equipment, and other incidentals, and the furnishing thereof.

Work Order – The assignment by OWNER of a construction project to a Prequalified Contractor; the contract for the specific project assigned; the Work Order Documents.

Work Order Adjustment – A written order to CONTRACTOR signed by OWNER authorizing, in conjunction with a purchase order, an addition, deletion, or revision in the Work (or, if applicable, an adjustment in the Contract Price or the Contract Time) issued after execution of the Work Order Authorization Form. The term Change Order as used herein also refers to a Work Order Adjustment.

Work Order Authorization Form -- The form issued by OWNER to notify a Prequalified Contractor of award of a Work Order Project; the Notice of Award.

Work Order Documents – The Request for Offers for a particular Project, the Prequalified Contractor's Offer, the signed Work Order Authorization, all signed Work Order Adjustment Forms, and all attachments such as Project Technical Specifications and Drawings, and the Wage Decision. Also made a part of the Work Order Documents are the bonds and insurance certificates provided by the CONTRACTOR and the mandatory forms completed and signed by the CONTRACTOR.

SECTION 2 – Contract Time; Project Start

2.1 Commencement of Contract Time; Notice to Proceed; Contract Term

2.1.1 Contract Time: In a Single Project Contract, the Contract Time will commence, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Agreement, provided, however, that the Contract Time shall commence to run on the ninetieth (90) day after the day of Bid Opening or the thirtieth (30th) day after the Effective Date of the Agreement whichever date is earlier, unless otherwise agreed upon by OWNER and CONTRACTOR. Any extensions of time agreed upon, by OWNER and CONTRACTOR, which increase the time for execution of the Agreement beyond ninety (90) days after the Bid Opening for a construction contract shall automatically and without further agreement between the OWNER and the CONTRACTOR increase the number of days before the Contract Time shall commence to run by the same number of days as the extension of time to execute the Agreement.

2.1.2 Contract Term: In an On-call Contract, a fixed Contract Term shall be stated in the Agreement signed by the CONTRACTOR and OWNER. Any extensions of the Contract Term must be in writing and signed by the parties to the Contract.

2.1.3. Fully Executed Contract Required: In the event the OWNER and the CONTRACTOR do not fully execute the Agreement within the time and extensions agreed upon, the contracting execution procedures shall be deemed cancelled and the Notice of Award shall be deemed rescinded.

2.1.4 Damages: The CONTRACTOR shall not be entitled to damages or increases in the CONTRACTOR'S compensation of any nature whatsoever, including but not limited to damages for such matters as extended home or other office overhead, delay and impact claims or ripple effect, interruption of schedules, additional Contract Time, and increases in costs of material, labor, supplies, equipment, or other items necessary to perform the Work of the Project, based upon: (1) the extension of time to execute the Agreement or to commence the Contract Time; (2) the refusal of OWNER to agree to extensions of the Contract Time or the time to extend execution of the Agreement; or (3) the OWNER'S rescission of the Notice of Award. This Section shall govern both in the event the Agreement is executed and in the event the Agreement is not executed.

2.2 Starting the Project

CONTRACTOR shall start to perform its obligations under the Contract Documents on the date when the Contract Time commences to run or the Contract Term commences. No Work shall be done under a Single Project Contract prior to the date on which the Contract Time commences to run, or for a Work Order, prior to the date on which the Contract Time in the applicable Work Order Authorization Form commences to run, following issuance of a Notice to Proceed.

2.3. Before Starting Construction

2.3.1 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to CONSULTANT any conflict, error or discrepancy which he may discover; however, he shall not be liable to OWNER or CONSULTANT for failure to discover any conflict, error, or discrepancy in the Project Technical Specifications or Drawings provided.

2.3.2 Within ten (10) days after delivery of the executed Agreement (for a Single Project Contract), or the executed Work Order Authorization Form (for a Work Order), by OWNER to CONTRACTOR, CONTRACTOR shall submit to CONSULTANT for approval an estimated critical

base progress schedule indicating the starting and completion dates of the various stages of the Work and a preliminary schedule of Shop Drawing submissions. If deemed unnecessary for the Project by the OWNER, this schedule may be waived.

2.3.3 Within twenty (20) days after delivery of the executed Agreement (for a Single Project Contract) or the executed Work Order Authorization Form (for a Work Order), by OWNER to CONTRACTOR, but before starting the Work at the Site, a pre-construction conference will be held to review the above schedules, to establish procedures for handling Shop Drawings and other submissions, for processing Applications for Payment, and to establish a working understanding between the parties as to the Project. Present at the conference will be OWNER or its representative, CONSULTANT, CONTRACTOR and its Superintendent, as defined in Section 6.1. below. If unnecessary for the Project, this conference may be waived by OWNER.

2.4 *CONTRACTOR'S Pre-Start Representations*

For a Single Project Contract or a Work Order, CONTRACTOR represents that it has familiarized itself with and assumes full responsibility for having familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect performance of the Work and represents that it has correlated its study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Project Technical Specifications and Drawings attached and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that CONTRACTOR has correlated the results of all such data with the requirements of the Contract Documents.

SECTION 3 - Correlation, Interpretation, and Intent of Contract Documents

3.1 It is the intent of the Project Technical Specifications and Drawings attached to the Bid Documents or Work Order to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR. They may be altered only by a Modification.

3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, he shall call it to CONSULTANT'S attention in writing at once and before proceeding with the Work affected thereby; however, he shall not be liable to OWNER or CONSULTANT for failure to discover any conflict, error, or discrepancy in the Project Technical Specifications or Drawings attached to the Bid Documents or Work Order. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the order set out in the Agreement contained in the RFB or RFP, whichever applies, signed by CONTRACTOR and OWNER.

SECTION 4 - Availability of Lands; Physical Conditions; Reference Points

4.1 Availability of Lands

OWNER shall furnish, as indicated in the Contract Documents and not later than the date when needed by CONTRACTOR, the lands upon which the Work is to be done, right-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise specified in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefor as provided in Section 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Physical Conditions--Survey and Reports

4.2.1 Copies Furnished: The OWNER will, upon request, furnish to the CONTRACTOR copies of all boundary surveys, subsurface tests, and other pertinent reports and material which are available in OWNER'S office.

4.2.2 Geotechnical Investigations: In the event that geotechnical investigations concerning subsurface conditions have been conducted and the results of such investigations have been included in the Contract Documents, they are solely for the information of OWNER; their accuracy and correctness are not guaranteed by OWNER; and in no event is such information to be considered to be a part of the Contract Documents. If this information is used by the Bidder or Prequalified Contractor in preparing its Bid Proposal or Offer, the Bidder or Prequalified Contractor hereby assumes all risks resulting from conditions differing from the information shown. The Bidder or Prequalified Contractor, in consideration of the opportunity to review the information, hereby releases OWNER from any responsibility or obligation as to the accuracy or completeness of such information or for any additional compensation for Work performed due to assumptions based on the use of such information. For the purposes of this Section, the term "geotechnical investigations" includes, but is not limited to, borings, soundings, test piles and test pits.

4.3 Unforeseen Physical Conditions

CONTRACTOR shall promptly notify OWNER and CONSULTANT in writing of any subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents. CONSULTANT shall promptly investigate those conditions and advise OWNER in writing if further surveys or subsurface tests are necessary.

Promptly thereafter OWNER shall obtain the necessary additional surveys and tests and furnish copies to CONSULTANT and CONTRACTOR. If CONSULTANT finds that the results of such surveys or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

4.4 Surveying

4.4.1 Permanent Survey Monuments: All permanent survey monuments will be shown on the construction plans. CONTRACTOR shall notify CONSULTANT not less than seven (7) days prior to starting work in order that CONSULTANT may take necessary measures to ensure the preservation of survey monuments. CONTRACTOR shall not disturb permanent survey monuments without the consent of CONSULTANT and shall notify CONSULTANT and bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only by a Surveyor licensed to practice in the State of New Mexico, under supervision of the CONSULTANT. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, CONTRACTOR shall, at its own expense, adjust the monument cover to the new grade unless otherwise specified.

4.4.2 Survey Stakes:

4.4.2.1 CONTRACTOR shall carefully preserve temporary bench marks, reference points and property corners and, in case of destruction, shall bear the expense of replacement and be responsible for any mistakes that may be caused by their loss or disturbance.

4.4.2.2 Construction survey stakes and marks will be set sufficiently in advance of the work so as to not interfere with CONTRACTOR'S construction progress and will be offset from the construction area. They will show the offset distance, location, and required cut or fill to the grade as indicated on the grade sheet, a copy of which will be furnished to CONTRACTOR.

4.4.2.3 CONTRACTOR shall construct the Work in accordance with the construction survey stakes and marks, making use of them before they are disturbed, and shall be responsible for the conformity and agreement of the Work with the construction Plans.

4.4.2.4 Any discrepancies in design or base lines and grades revealed in construction operations shall be brought to CONSULTANT'S attention immediately for correction or clarification. If CONTRACTOR elects to proceed with construction before such corrections or clarifications are made, CONTRACTOR shall do so at its own risk and expense.

4.4.2.5 CONTRACTOR shall be responsible for the preservation of construction survey stakes and marks until inspected by CONSULTANT or for the duration of their usefulness during construction and collecting "As-Built" information. If any construction survey stakes or marks are lost or disturbed, and in the opinion of CONSULTANT need to be replaced, such replacement shall be by CONSULTANT at the expense of CONTRACTOR. The cost of replacing them shall be charged against, and shall be deducted from, the payment to CONTRACTOR for the Work.

4.4.3 Survey Services:

4.4.3.1 Description. The survey shall consist of construction staking lines, grades and layouts by the CONTRACTOR in accordance with the Project Technical Specifications and Drawings attached to the Bid Documents or the Work Order and as directed by the CONSULTANT.

4.4.3.2 Materials. The CONTRACTOR shall furnish all stakes, templates, straightedges, surveying equipment and other devices necessary for establishing, checking, marking, and maintaining points, including PIs, PCs, PTs, and lines, grades and layouts. As directed by the CONSULTANT, points shall be referenced so that they may later be re-established.

4.4.3.3 Construction Requirements (Construction Staking by the CONTRACTOR). Construction staking by the CONTRACTOR shall include use of vertical and horizontal survey control points to establish construction survey points and establish additional bench marks as necessary; setting grades for culverts or drains, slopes, subgrade, subbase, base course, paving, and any other points or elevations deemed necessary for proper control of the Work.

Survey control must be verified by the CONTRACTOR against the Contract Documents on a daily basis.

Field notes shall be kept in standard field notebooks and shall become the property of OWNER upon completion of the Work. The standard field notebooks shall be made available to the CONSULTANT upon request at any time during the prosecution of the Work.

Any discrepancies in grade, alignment, locations, and/or dimensions detected by the CONTRACTOR shall immediately be brought to the attention of the CONSULTANT.

CONTRACTOR shall employ sufficient qualified personnel experienced in surveying and layout to complete the survey work accurately. The construction staking shall be performed under the direct control and personal supervision of a person who is duly registered as a professional land surveyor and is currently authorized to practice as such in the State of New Mexico.

CONTRACTOR shall present the credentials of the surveyor at the preconstruction conference for review and approval by the CONSULTANT. Any errors in the construction of the Project because of the construction staking shall be corrected by CONTRACTOR. Any overruns resulting from CONTRACTOR'S errors will be at the expense of CONTRACTOR.

CONSULTANT may check the accuracy of the construction stakes, lines, grades and layouts but will assume no responsibility for the accuracy or the final result of the construction stakes, lines, grades and layouts.

4.4.3.4 Method of Measurement. Construction staking by CONTRACTOR as specified herein shall be measured and bid or offered as a lump sum.

4.4.3.5 Basis of Payment. For unit price Bids or Offers, construction staking by CONTRACTOR shall be paid for at a lump sum Bid or Offer price and all necessary personnel, equipment and supplies to accomplish this survey work shall be incidental to (i.e. included in) the Bid or Offer price of this item.

No adjustments in the lump sum price for this item will be made for staking required due to normal increases in Contract items.

For lump sum Bids or Offers, construction staking by CONTRACTOR will be incidental to (i.e. included in) the base Bid or Offer.

SECTION 5 - Bonds and Insurance

5.1 Bid, Performance, Payment, and Other Bonds

5.1.1 Bid Bond (RFB for Construction): All Bidders shall furnish with their Bid Proposals a bid bond in the amount of five percent (5%) of the total amount of the Bid, in such form as provided in the Bid Documents, and with such sureties as are duly authorized to conduct business in the State of New Mexico and are named in the most current version of the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), which can be found at www.fiscal.treasury.gov.

5.1.2 Surety Letter (RFP for On-Call Construction Services): All Offerors will provide with their Proposals, a letter from a bonding company licensed to conduct business in the State of New Mexico, and acceptable to OWNER, confirming Offeror's ability to obtain performance and labor and material payment bonds. The letter must be notarized and affirm the bonding capacity of the Offeror for projects of the type described in the RFP for on-call construction services.

5.1.3 Bid Bond (Work Order): If a Work Order Project is estimated by the Procurement Officer to exceed Twenty-five Thousand Dollars (\$25,000) in cost, all Prequalified Contractors will furnish with their Offers a bid bond in the amount of five percent (5%) of the total amount of the Offer, in such form as provided in the Request for Offers, and with such sureties as are duly authorized to conduct business in the State of New Mexico and are named in the most current version of the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), which can be found at www.fiscal.treasury.gov.

5.1.4 Performance and Labor and Material Payment Bonds: CONTRACTOR shall furnish performance and labor and material payment bonds as security for the faithful performance and payment of all its obligations under the Contract Documents. These bonds shall be in amounts at least equal to the Contract Price and (except as otherwise provided in the Contract Documents) in such form as provided in the Bid or RFP Documents, and with such sureties as are duly authorized to conduct business in the State of New Mexico and are named in the most current version of the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), which can be found at www.fiscal.treasury.gov. The performance bond shall also include coverage for the Correction Period (see Section 13.7). The surety on the performance bond shall furnish a waiver whereby he consents to the progress or partial payment to CONTRACTOR of amounts for materials under the provisions of Section 14.2 of these General Terms and Conditions, and acknowledges, in accordance with Section 14.11 that such payment, whether or not in strict compliance with these provisions shall not preclude or stop OWNER from showing the true character and quantity of the materials furnished or from recovering from CONTRACTOR or its sureties such damages as OWNER may sustain by reason of deficiency in quantity of the materials with respect to which a progress payment was made.

5.1.5 Substitution Required: If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to conduct business in the State of New Mexico is revoked, CONTRACTOR shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to OWNER.

5.2 Insurance

5.2.1 **General Conditions:** CONTRACTOR shall procure and maintain in full force and effect during the life of this Contract, or for such other time as stated herein, the insurance coverages and limits as shown below. The insurance coverages and limits shown are the minimum requirements in this Agreement. The Commercial General Liability coverage shall be maintained for a period not less than ten (10) years following the date of substantial completion of the project and acceptance by OWNER. Should Contractor or any subcontractor maintain insurance policies

with broader coverage and limits of liability that exceed these minimum coverage and limits required, then the broader coverages and higher limits shall be deemed to apply for the benefit of OWNER.

Policies of insurance shall be in a form satisfactory to OWNER. CONTRACTOR'S insurers must be authorized to write such insurance in New Mexico and shall have an "A" policyholder's rating and a financial rating of at least Class A VII in accordance with the most current Best's rating, unless specifically waived in writing by the Water Authority Risk Program Manager.

CONTRACTOR shall be responsible for the cost of required insurance in the prices quoted for the Work and no additional compensation will be made therefor.

Prior to the commencement of the work, CONTRACTOR shall furnish OWNER certificates of insurance and required endorsements (or copies of insurance policies upon OWNER's request), evidencing compliance with these insurance requirements. The OWNER reserves the right to require complete, certified copies of all required insurance policies which shall be provided within ten (10) days of such request; provided, however, that such policies may be redacted to exclude premium details and forms and endorsements which are not applicable to CONTRACTOR or any CONTRACTOR entities with whom OWNER has contracted.

CONTRACTOR shall ensure that the Authority receives not less than thirty (30) days prior written notice of cancellation, non-renewal, or material reduction in the coverages set forth below, except where cancellation is due to the non-payment of premiums, in which event, ten (10) days prior written notice shall be provided. Such notices and certificates of insurance shall be given to the Risk Program Manager, Albuquerque Bernalillo County Water Utility Authority, Box 568, Albuquerque, New Mexico 87103,. Various types of required insurance may be written in one or more policies. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

During the term of this Agreement coverage limits of required policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts without prior approval from the OWNER.

If part of the Contract is sublet, CONTRACTOR shall include any and all Subcontractors in his insurance policies, or require each Subcontractor to comply with the Indemnity provisions and secure appropriate insurance and limits of coverage to protect itself against all hazards related to the nature and scope of services to be performed by Subcontractor and not covered by CONTRACTOR'S policies. Contractor shall ensure that in its contract with subcontractors, the subcontractors are required to include the OWNER, CONSULTANT, and the City of Albuquerque as additional insured for all ongoing and completed operations on the Commercial General Liability policy(ies). CONTRACTOR shall require subcontractors to provide CONTRACTOR with certificates of insurance before beginning any operations and/or performance under this Agreement.

5.2.2 Approval of Insurance: Notwithstanding the issuance of a "Notice to Proceed" , neither CONTRACTOR nor any Subcontractor shall begin any Work under this Contract until the required insurance has been obtained and the proper certificates of insurance (or policies if requested by OWNER) have been provided to OWNER. Neither approval nor failure to disapprove certificates, policies of insurance by OWNER shall relieve CONTRACTOR or any Subcontractor of full responsibility to maintain the required insurance in full force and effect, or reduce their liability arising out of the performance of the work or services under this Agreement.

5.2.3 Commercial General Liability Insurance: CONTRACTOR shall procure and maintain for such time as specified herein a Commercial General Liability policy which shall be written on an occurrence basis with coverage as broad as Insurance Services Office (ISO) form CG 00 01 for

claims against bodily injury, personal and advertising injury, and property damage, including products-completed operations and contractual liability coverage for liabilities assumed under this Agreement as an “insured contract,” with limits not less than:

\$2,000,000	Per Occurrence
\$4,000,000	Policy Aggregate
\$4,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury

a. The Commercial General Liability Coverage shall include the following endorsements:

- (i) Aggregate Limit Per Project endorsement;
- (ii) OWNER, CONSULTANT, their respective officials, agents, and employees shall be included as Additional Insureds (“Additional Insureds”) using coverage as broad as ISO Additional Insured endorsements CG 20 10 (ongoing operations) and CG 20 37 (completed operations) or a blanket additional insured endorsement applicable “when required by written contract or agreement”. If the blanket additional insured endorsement is used, premises and operations as well as products-completed operations coverage must be provided for the Additional Insureds;
- (iii) A Waiver of Subrogation endorsement in favor of the Additional Insureds or a blanket waiver of subrogation endorsement;
- (iv) A Primary, Non-contributory endorsement in favor of the Additional Insureds or a blanket primary, non-contributory endorsement;
- (v) Written notice of cancellation to the OWNER, providing 30-days prior notice of cancellation or non-renewal, excepting only non-payment of premium, which will be 10-days prior written notice.

b. The Commercial General Liability Coverage shall not include the following endorsements:

- (i) Amendment of Contractual Liability;
- (ii) Total Pollution Exclusion;
- (iii) Cross Claims or Cross Suits Liability Exclusion;
- (iv) X, C, U Exclusion (Explosion, Collapse, and Underground Hazard);
- (v) Subsidence of Soil or Earth Movement Exclusion.

The Commercial General Liability policy shall include coverage against claims for bodily injury (including death), and for the destruction of public and private property arising out of CONTRACTOR’S and/or subcontractors’ operations, including, but not limited to, the following:

Conduits: telephone, telegraph, power; ,
Cables: telephone signal, fiber optics, television, computer;

Circuits, Mains and Sewers: fire alarm, gas mains, gas service connections, sanitary sewers, sewer, house or building connections, water mains, water service connections, steam linPipelines

and Drains: petroleum products pipe lines, storm drains, storm inlet lines, including all appurtenances thereto while located below the surface of the ground.

Structural Damage: buildings, houses or other structures, including power, telephone, telegraph, fire alarm, or street-light poles, curb and gutter and sidewalk, on public or private property, and destruction of, or damage to, other public and private property resulting therefrom.

5.2.4 Automobile Liability Insurance. An automobile liability insurance policy at least as broad as ISO Business Auto form CA 00 01 with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one accident. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work. Coverage shall include Contractual Liability.

The Business Auto coverage shall include the following endorsements:

- (i) Broadened Pollution Coverage Endorsement;
- (ii) OWNER, its officials, agents, and employees shall be included as Additional Insureds ("Additional Insureds") or a blanket additional insured endorsement;
- (iii) A Waiver of Subrogation endorsement in favor of the Additional Insureds or a blanket waiver of subrogation endorsement;
- (iv) A Primary, Non-contributory endorsement in favor of the Additional Insureds or a blanket primary, non-contributory endorsement;

Notice of cancellation to OWNER, providing 30-days prior notice of cancellation or non-renewal, excepting only non-payment of premium, which will be 10-days prior notice.

5.2.5 Owner's and Contractor's Protective Liability Insurance: CONTRACTOR shall procure, prior to commencing Work, and maintain throughout the Project, an owner's and contractor's protective liability insurance policy with liability limits in amounts not less than \$2,000,000 per occurrence for bodily injury, including death, and property damage. The policy will be written with OWNER and as the Named Insured and will provide coverage for OWNER'S officers, agents, and employees while acting within the scope of their duties against all claims arising out of or in connection with the Work to be performed. Said policy shall include CONSULTANT as an additional insured. To the fullest extent permitted by law, t In certain cases, other government agencies may be required as named insureds.

5.2.6 Workers' Compensation/Employer's Liability Insurance: CONTRACTOR shall comply with the provisions of the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law and shall procure and maintain during the life of this Contract, complete workers' compensation and employer's liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. With respect to workers' compensation Insurance, if CONTRACTOR elects to be self-insured, he shall comply with the applicable requirements of law. If any portion of the Work is to be sublet, CONTRACTOR shall require the Subcontractor similarly to provide such coverage (or qualify as a self-insured) for all latter's employees to be engaged in such Work. CONTRACTOR shall save harmless OWNER and CONSULTANT, its officers, agents and employees from any claims or actions occasioned by failure of CONTRACTOR to comply with the provisions of this Section. The Employer's Liability coverage shall have limits not

less than \$1,000,000 each accident; \$1,000,000 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by disease.

- a. The Workers' Compensation coverage shall include the following endorsements:
 - (i) A Waiver of Subrogation endorsement in favor of the Additional Insureds or a blanket waiver of subrogation endorsement;
 - (ii) If the Contractor or any Subcontractor is using a Professional Employer Organization or any other type of staffing company to lease employees, Contractor must notify and seek express approval from OWNER prior to the execution of this Agreement;
 - (iii) Notice of cancellation to OWNER, providing 30-days prior notice of cancellation or non-renewal, excepting only non-payment of premium, which will be 10-days prior notice.

In addition, nonresident CONTRACTORS shall comply with the provisions of Section 52-1-66 of the New Mexico Workers' Compensation Act and Sections 59A-17-10.1, 59A-18-1, and 59A-18-12 of the Insurance Code, NMSA 1978, pertaining to the worker's compensation insurance policy and rates for employers not domiciled in New Mexico.

5.2.7 Builders Risk (Course of Construction) Insurance: During all phases of construction and/or renovation work, CONTRACTOR shall maintain builder's risk insurance covering "Special Form" risks of direct physical loss, including, but not limited to, fire, theft, water, explosion, vandalism, mechanical breakdown, electrical arcing, ordinance or law, in an amount sufficient to cover the total value of the structure(s), without co-insurance penalties. Such coverage shall include all items of labor and material, soft costs such as loss of income, architect and engineer fees, building permits and any other non-recurring costs as may be appropriate for CONTRACTOR. Said policy shall also provide coverage from the time any covered property becomes the responsibility of CONTRACTOR and/or its Subcontractors, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction/installation site, awaiting installation, or in storage, whether on or off the site.

- a. The policy shall include as insureds the Contractor, all subcontractors, and OWNER. OWNER shall be named as loss payee with a loss payable clause stating that "loss, if any, shall be payable to the Albuquerque Bernalillo County Water Utility Authority as its interests may appear."

If the Contract includes bridge, culvert or channel lining work, either new construction or repair work, CONTRACTOR shall procure and maintain during the life of such work until the work is accepted by OWNER, property insurance upon the entire channel work to the full insurable value thereof. Such insurance shall include the interest of OWNER, CONTRACTOR, and Subcontractors and shall be on an "all risk" basis, specifically including the perils of fire, extended coverage, theft, vandalism, malicious mischief, flood and earthquake. The deductible for the flood and earthquake coverage shall not be greater than twenty percent (20%) of the insurable value of the Work, and in no event shall the deductible be more than Twenty-Five Thousand Dollars (\$25,000.00).

5.2.8. Pollution Liability Insurance with limits not less than \$2,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any

services or work performed by Contractor under this Agreement, including the transportation of hazardous waste, hazardous materials, or contaminants.

- (i) OWNER, its officials, agents, and employees shall be included as Additional Insureds ("Additional Insureds") using coverage as broad as ISO Additional Insured endorsements CG 20 10 and CG 20 37 or a blanket additional insured endorsement applicable "when required by written contract or agreement". If the blanket additional insured endorsement is used, premises and operations as well as products-completed operations coverage must be provided for the Additional Insureds;
- (ii) A Waiver of Subrogation endorsement in favor of the Additional Insureds or a blanket waiver of subrogation endorsement;
- (iii) A Primary, Non-contributory endorsement in favor of the Additional Insureds or a blanket primary, non-contributory endorsement;

Written notice of cancellation to the OWNER, providing 30-days prior notice of cancellation or non-renewal, excepting only non-payment of premium, which will be 10-days prior written notice.

5.2.9. Professional Liability Insurance with limits not less than \$2,000,000 per claim and \$2,000,000 aggregate limit. Such insurance coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement.

- (i) This insurance requirement applies when the CONTRACTOR is providing project management, design-build, engineer, architect or other types of professional services to the OWNER;
- (ii) The policy shall contain a retroactive date no later than the effective date of the contract;
- (iii) The policy should contain an extended reporting period of not less than three (3) years after the termination of this contract.
- (iv)

5.2.10. Umbrella or Excess Liability coverage with limits not less than \$3,000,000 over the Commercial General Liability, Automobile Liability and Employer's Liability policies.

The Umbrella or Excess Liability coverage shall include the following endorsements:

- (i) OWNER, CONSULTANT, their respective officials, agents, and employees shall be included as Additional Insureds ("Additional Insureds") using coverage as broad as ISO Additional Insured endorsements CG 20 10 (ongoing operations) and CG 20 37 (completed operations) or a blanket additional insured endorsement applicable "when required by written contract or agreement". If the blanket additional insured endorsement is used, premises and operations as well as products-completed operations coverage must be provided for the Additional Insureds;
- (ii) A Waiver of Subrogation endorsement in favor of the Additional Insureds or a blanket waiver of subrogation endorsement;

- (iii) A Primary, Non-contributory endorsement in favor of the Additional Insureds or a blanket primary, non-contributory endorsement;
- (iv) Written notice of cancellation to the OWNER, providing 30-days prior notice of cancellation or non-renewal, excepting only non-payment of premium, which will be 10-days prior written notice.

5.2.11 Increased Limits: If, during the life of this Contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27 NMSA 1978), OWNER may require CONTRACTOR to increase the maximum limits of any insurance required herein. In the event that CONTRACTOR is so required to increase the limits of such insurance, an appropriate adjustment in the Contract Price will be made.

5.2.12. Provisions Applicable to All Insurance

- (i) Should any of the insurance policies contain either a deductible or self-insured retention, the CONTRACTOR or Subcontractor shall be responsible to pay that deductible or self-insured retention and OWNER shall not be responsible to pay these costs.
- (ii) The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. OWNER does not warrant that the minimum limits contained herein are sufficient to protect CONTRACTOR for liabilities that might arise from the performance of the work under this Agreement by CONTRACTOR, its agents, representatives, employees, or subcontractors, and CONTRACTOR is free to purchase additional insurance as may be determined necessary. The insurance requirements specified in this Agreement do not reduce the liability CONTRACTOR has assumed in the indemnification/hold harmless provision(s) of this Agreement.
- (iii) Should any required insurance policies be cancelled, non-renewed or if the CONTRACTOR or Subcontractor fails to renew, CONTRACTOR or Subcontractor shall provide notice of such cancellation, non-renewal or failure to renew immediately to OWNER.
- (iv) If any coverage is maintained on a claims-made basis, the following shall apply:
 - a. The retroactive date must be shown and must be before the date of this Agreement or the beginning of any work or services under this Agreement;
 - b. Coverage must be maintained and evidence of coverage must be provided for at least three (3) years after termination of this Agreement;
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after termination of this Agreement.
- (v) Certificates of Insurance Coverage shall be filed by CONTRACTOR with the OWNER evidencing all of the insurance coverages required in this section at the time this Agreement is executed.

- a. The certificates must have all required endorsements attached or the certificate will be deemed non-compliant;
- b. Each successive year during the insurance requirement period shall be filed in the same manner;
- c. The failure to furnish such evidence may be considered default by CONTRACTOR. OWNER reserves the right to require complete, certified copies of all required insurance policies at any time;
- d. It is the obligation of the CONTRACTOR to obtain and maintain records of the required insurance coverages from all Subcontractors. Subcontractors' Commercial General Liability policies shall be maintained for at least ten (10) years following substantial completion of the project. The information contained in these Subcontractor insurance records shall be made available to OWNER immediately upon request.

5.3 Additional Bonds and Insurance

Prior to delivery of the executed Agreement by OWNER to CONTRACTOR, OWNER may require CONTRACTOR to furnish such other bonds and such additional insurance, in such form and with such sureties or insurers, as OWNER may require. If such other bonds or such other insurance are specified by written instructions given prior to opening of Bids or receipt of Proposals or Offers, the premiums shall be paid by CONTRACTOR; if subsequent thereto, they shall be paid by OWNER (except as otherwise provided in Section 6.3).

SECTION 6 - CONTRACTOR'S Responsibilities

6.1 Supervision and Superintendence

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

6.1.2 CONTRACTOR shall keep at the Site, at all times during the progress of the Work, a competent resident Superintendent, who speaks English fluently and has a minimum of three (3) years' experience on projects similar in scope, complexity and construction valuation. The CONTRACTOR shall not replace the Superintendent without providing forty-eight (48) hours written notice to OWNER and/or CONSULTANT, except under extraordinary circumstances. The CONTRACTOR shall submit a resume and the qualifications of the proposed substitute Superintendent along with the written notification and OWNER and/or CONSULTANT shall review and approve or deny the proposed substitute. The Superintendent will be CONTRACTOR'S representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to Superintendent shall be as binding as if given to CONTRACTOR.

6.2 Labor, Materials and Equipment

6.2.1 CONTRACTOR shall provide competent, suitably qualified personnel to perform the construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

6.2.2 For time and materials projects, CONTRACTOR shall only provide essential personnel performing essential functions as approved by OWNER.

6.2.3 CONTRACTOR shall furnish and include in the Contract Price the costs of all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of the Work.

6.2.4 CONTRACTOR shall provide, at CONTRACTOR'S expense, ample and approved supplies of water of proper quality at convenient points for all operations to be carried on under this Contract. CONTRACTOR may withdraw water from fire hydrants for this Contract in accordance with the Water Authority "Water and Sewer Rates Ordinance", or any successor ordinances.

6.2.5 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by CONSULTANT, CONTRACTOR shall furnish satisfactory evidence of the kind and quality of materials and equipment.

6.2.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise provided in the Contract Documents.

6.2.7 No labor, materials, equipment or facilities will be furnished by OWNER unless otherwise specified in the Contract Documents.

6.3 Substitute Materials or Equipment

6.3.1 In the construction of all Work, if OWNER has a preference for any process, type of equipment or kind of material, it will be indicated in the Specifications; otherwise, OWNER will consider all processes, types of equipment or kinds of material offered on an equal competitive basis and will be the sole judge as to whether or not what is offered meets its requirements.

6.3.2 If a particular process, type of equipment or kind of materials is specified and CONTRACTOR wishes to furnish or use a proposed substitute, CONTRACTOR shall make written application to CONSULTANT for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that a specified; stating whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. In the written application for substitution the CONTRACTOR shall be solely responsible for all costs of any redesign of any part of the Project required to accommodate the substituted item. No substitute shall be ordered or installed without the written approval of CONSULTANT, who will be the judge of equality and may require CONTRACTOR to furnish such other data about the proposed substitute as CONSULTANT considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as OWNER may require which shall be furnished at CONTRACTOR'S expense. CONTRACTOR shall not be entitled to extra costs, Contract Time, or home office overhead for the time taken by CONSULTANT to evaluate, approve or deny an application for substitution or redesign any part of the Project required to accommodate the substituted item.

6.4 Concerning Subcontractors

6.4.1 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER may have reasonable objection or who has been debarred by OWNER, any federal or State agency or other local public body. A Subcontractor or other person or organization identified on the SFPA Listing of Subcontractors form in the CONTRACTOR'S Bid or the Prequalified Contractor's Offer, or in writing to OWNER by CONTRACTOR prior to delivery of the Notice of Award and not objected to in writing by OWNER prior to the Notice of Award will be deemed acceptable to OWNER. Acceptance of any Subcontractor, other person, or organization by OWNER shall not constitute a waiver of any right of OWNER to reject Defective Work or Work not in conformance with the Contract Documents.

6.4.2 If OWNER, after due investigation, has reasonable objection to any Subcontractor, other person, or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute and the Contract Price shall not be increased but may be decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. CONTRACTOR shall not be required to employ any Subcontractor, other person, or organization against whom he has reasonable objection. CONTRACTOR shall not, without the consent of OWNER, make any substitution for any Subcontractor, other person, or organization who has been accepted by OWNER.

6.4.3 If a CONTRACTOR desires to substitute a Subcontractor that has been shown on the SPFA Listing of Subcontractors form of its Bid or Offer, the CONTRACTOR must follow the procedures in the SUBCONTRACTORS' FAIR PRACTICE ACT, NMSA 1978 §§ 13-4-31 – 13-4-43 (SFPA), if applicable. The CONTRACTOR is not entitled to an extension of the Contract Time or an increase in the Contract Price due to SFPA procedures being implemented, either before or after issuance of the Notice of Award.

6.4.4 CONTRACTOR shall be fully responsible for all acts and omissions of s Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and

organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between OWNER or CONSULTANT and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or CONSULTANT to pay or to see to the payment of any monies due any Subcontractor or other person or organization, except as may otherwise be required by law. OWNER or CONSULTANT may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done in accordance with the Schedule of Values and/or Bid Proposal or Offer.

6.4.5 The Sections of the Project Technical Specifications and the identifications of any Plans or Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

6.4.6 CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER.

6.5 Patent Fees and Royalties

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

6.6 Permits

CONTRACTOR shall obtain and pay for all construction permits and licenses and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall also pay all public utility charges.

6.7 Laws and Regulations

CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.). If CONTRACTOR observes that the Project Technical Specifications or Drawings attached to the Bid Documents or Work Order are at variance therewith, he shall give CONSULTANT prompt written notice thereof; and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to CONSULTANT, CONTRACTOR shall bear all costs arising therefrom.

6.8 Taxes

CONTRACTOR shall pay all gross receipts, sales, consumer, use and other similar taxes and assessments and levies required to be paid by him in accordance with the law of the place where

the Work is to be performed. CONTRACTOR shall use and require the use of non-taxable transaction certificates by Subcontractors and suppliers whenever allowed by law. In any event, CONTRACTOR shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which CONTRACTOR calculates its gross receipts taxes when billing OWNER. OWNER will not pay tax on non-taxable items.

6.9 Use of Premises

6.9.1 CONTRACTOR shall confine equipment, the storage of materials and equipment, and operations to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

6.9.2 CONTRACTOR shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall he subject any part of the Work to stresses or pressures that will endanger it.

6.9.3. CONTRACTOR shall maintain all work sites to be graffiti-free. Upon notification of graffiti found on the Site, including CONTRACTOR'S equipment, facilities, and appurtenances, any and all barricading and signage associated with the Project, CONTRACTOR shall have twenty-four (24) hours to begin removal of all graffiti. Graffiti removal shall continue expeditiously until completed. If CONTRACTOR fails to begin or complete graffiti removal, the graffiti may be removed by OWNER at CONTRACTOR'S sole cost. Failure to promptly remove graffiti may also result in revocation of CONTRACTOR'S barricading permit, citation to Metropolitan Court, or both.

6.10 Record or As-Built Drawings

CONTRACTOR shall keep one record copy of all Project Technical Specifications, Plans, Addenda, Modifications, and Shop Drawings at the Site in good order and annotated to show all changes and/or modifications made during the construction process. Record information must be updated in real time and always available for review by OWNER and/or CONSULTANT. Record information will be verified as current by OWNER and/or CONSULTANT prior to approval of monthly pay applications. OWNER reserves the right to withhold payment from CONTRACTOR for CONTRACTOR'S failure to comply with this provision. Record information shall be delivered to CONSULTANT for OWNER'S records upon completion of the Project.

If a Project is undertaken without Plans, CONTRACTOR shall nevertheless maintain record information in a manner, and of a quality that permits accurate Project record drawings to be created by OWNER following completion of the Work.

6.11 Safety

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent injury, or loss to all employees on the Work and other persons who may be affected thereby.

6.11.2 CONTRACTOR shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection of the property adjacent to the construction Work. CONTRACTOR shall comply with 29 CFR Part 1926, Subpart P, Department of Labor Occupational Safety and Health Administration, Occupational Safety and Health Standards – Excavations, Final Rule, and all amendments thereto, whenever CONTRACTOR is performing excavation activities.

6.11.3. Means of ingress and egress shall be provided for all persons living or working on streets in which Work is being done. All sidewalks, public walkways and drainage gutters/drainage ways

shall be open, and fire hydrants and water system valves shall be left accessible for use at all times.

6.11.4 CONTRACTOR shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S Superintendent, unless otherwise designated in writing by CONTRACTOR to CONSULTANT and OWNER.

6.11.5. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or to protect them from injury, or loss.

6.12. Protection of Work.

6.12.1 CONTRACTOR shall be responsible for initiating, maintaining, and supervising protection of all materials and equipment to be incorporated into the Project, whether in storage on or off the Site, and finished Work that is complete in place. CONTRACTOR shall take all necessary precautions to prevent damage, injury or loss said materials, equipment and Work and other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

6.12.2 CONTRACTOR shall conduct its operations in a manner which will minimize interference with the normal use of property adjacent to the construction Work and shall give owners of such property at least twenty-four (24) hours' notice of the commencement of work in the area abutting their property. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction to protect property from damage, injury, or loss. CONTRACTOR shall notify owners of adjacent utilities at least 48 hours in advance when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in Section 6.12.1. caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR, except damage or loss attributable to the fault of Project Technical Specifications or Plans attached to the Bid Documents or Work Order or to the acts or omissions of OWNER or CONSULTANT or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR. CONTRACTOR'S duties and responsibilities for the protection of the Work shall continue until such time as the Work is completed and CONSULTANT has issued a notice to OWNER and CONTRACTOR in accordance with Section 14.10 that the Work is acceptable.

6.12.3 CONTRACTOR shall assume full responsibility for any damage (1) to the property and improvements thereon at the Project Site and (2) to other property and improvements thereon used or damaged by the CONTRACTOR in the performance of the Work including damages sustained by the owner or occupant of such land or areas contiguous thereto. Should any claim be made against OWNER by such other property owners or occupants because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. CONTRACTOR shall, to the fullest extent permitted by laws and regulations, defend, indemnify and hold OWNER harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys, and other professionals, and court and arbitration costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against OWNER to the extent to the extent that the claims, damages, losses or expenses are caused by, or arise out of, the acts or omissions of CONTRACTOR, its officers, agents, or employees. This Section shall also apply to claims asserted against OWNER based on CONTRACTOR'S alleged trespass on public or private property. This indemnification

requirement shall be subject to the provisions of Section 6.17.3, which is incorporated herein as though set forth in full.

6.12.4 CONTRACTOR shall not trespass upon public or private property, and shall at all times take proper precautions to protect public and private property from damage.

6.12.5 Weather Conditions: In the event of temporary suspension of the Work or during inclement weather, or if required by CONSULTANT, CONTRACTOR shall, and shall cause its Subcontractors to protect carefully all of the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site, against damage, injury or loss from the weather. If, in the opinion of CONSULTANT, any of the Work or materials or equipment to be incorporated therein shall have been damaged or injured or OWNER has suffered any loss by reason of failure on the part of CONTRACTOR or any of its Subcontractors so to protect the Work and materials and equipment to be incorporated therein, all such damage, injury or loss shall be promptly remedied at the expense of CONTRACTOR. Until the Project is accepted by OWNER, CONTRACTOR shall be responsible for protecting completed Work, Work in progress, equipment, materials and property from storm water, wind, erosion, sediment, and related elements. All damage, injury or loss resulting from storm water, wind, erosion, sediment, or related elements shall be promptly corrected at CONTRACTOR'S expense.

6.13 Emergencies

In emergencies affecting the safety of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CONSULTANT or OWNER, is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give CONSULTANT prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby; and a Change Order may thereupon be issued covering the changes and deviations involved. If CONTRACTOR believes that additional work done in an emergency which arose from causes beyond its control entitles CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Sections 11 and 12.

6.14 Shop Drawings and Samples

6.14.1 CONTRACTOR shall submit to CONSULTANT for review all Shop Drawings and samples in accordance with the accepted schedule of Shop Drawing submittals.

6.14.2 All data shall be submitted to the CONSULTANT within thirty (30) days after receipt of the Notice to Proceed in strict accordance with the following procedures:

6.14.2.1 Data shall be provided in not more than four (4) separate submittals. Submittals should be made in groups of items which are related to facilitate cross-checking and coordination. Each submittal shall be in nine (9) copies.

6.14.2.2 Each submittal shall be accompanied by a letter giving CONTRACTOR'S name, the Project name and an itemized list of the submitted data.

6.14.3 Should the above procedure not be followed, CONTRACTOR may not make any claim for loss of time or money as a result of delay in receiving approved submittal data. Materials fabricated or delivered to the Site before CONSULTANT'S approval of Shop Drawings has been received by CONTRACTOR shall be subject to rejection by CONSULTANT.

6.14.4 CONTRACTOR shall also submit to CONSULTANT for review and approval, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, pertinent catalog numbers and the use for which intended.

6.14.5 At the time of each submission, CONTRACTOR shall in writing call CONSULTANT'S attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

6.14.6 CONSULTANT will review and approve with reasonable promptness Shop Drawings and samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) nor to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make any corrections required by CONSULTANT and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved.

6.14.7 CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by CONSULTANT on previous submissions. CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to OWNER and CONSULTANT that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so; and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents, and/or agrees to pay all costs of re-designing or modifying other items to accommodate the item(s) submitted.

6.14.8 Where a Shop Drawing or sample submission is required by the Contract, no related Work shall be commenced until the submission has been approved by CONSULTANT. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by CONTRACTOR at the Site and shall be available to CONSULTANT.

6.14.9 CONSULTANT'S review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any deviations from the requirements of the Contract Documents unless CONTRACTOR has in writing called CONSULTANT'S attention to such deviation at the time of submission and CONSULTANT has given written approval to the specific deviation. any approval by CONSULTANT shall not relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings. If deviations from the requirements of the Contract Documents are discovered either prior to or after Shop Drawing submittals are processed by CONSULTANT, the Project Technical Specifications and Drawings attached to the Bid Documents or Work Order shall govern the Work.

6.15 Cleaning

CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Work; and at the completion of the Work, shall remove all waste materials, rubbish, and debris from and about the premises, as well as all tools, construction equipment and machinery, and surplus materials and shall leave the Site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents unless the completion of the Work is directly affected by the item in dispute.

6.16 Hazardous Materials

CONTRACTOR shall, without additional expense to OWNER, be responsible for obtaining any necessary licenses and permits required by law or regulation, and comply with all federal, state, municipal law, code, ordinance and regulation applicable to the performance of the Work in connection with hazardous materials. CONTRACTOR shall be responsible for all damages to persons or property that occur as a result of CONTRACTOR'S fault or negligence and shall take

proper safety and health precautions to protect the Work, the workers, and the public, and the property of others. CONTRACTOR shall be responsible for all materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been specifically accepted by OWNER under the Contract.

6.17 Indemnification

6.17.1 To the fullest extent permitted by law, CONTRACTOR agrees to defend, indemnify, and save harmless OWNER and CONSULTANT, and their officers, agents, and employees (the "Indemnitees") from and against all "Claims", including suits, actions, demands, or proceedings of any character brought because of any injury or damage received or sustained by any person, persons, or property, arising out of the performance of the Work by CONTRACTOR, or by reason of any act or omission, neglect, or misconduct of CONTRACTOR, its officers, agents, employees, or any Subcontractor, its officers, agents, or employees, except to the extent such injury or damage is caused by or results from the negligence, act, or omission of the Indemnitees.

This indemnification provision is subject to the limitations and provisions of NMSA 1978 §§ 56-7-1 (2005). CONTRACTOR is not required to indemnify, defend, or hold harmless the Indemnitees for the negligence, act, or omission of the Indemnitees.

"Claims" for purposes of this Section shall include claims based on contracts of indemnity between the OWNER and a third party that cover liability of the third party for injury or damage received or sustained by any person, or to property, arising out of the performance of the Work by CONTRACTOR, and by reason of any act or omission, neglect, or misconduct of CONTRACTOR, its officers, agents, or employees, or any Subcontractor, its officers, agents, or employees.

6.17.2 This indemnity provision shall equally apply to injuries sustained by CONTRACTOR'S employees or the employees of Subcontractors. In the case of any and all claims against the Indemnitees brought by any employees of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.17.1 shall not be limited by any restriction on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefit provisions.

6.17.4. CONTRACTOR'S obligations to procure insurance naming OWNER as an additional insured shall be construed consistently with this Section, and in accordance with NMSA 1978 § 56-7-1(D) (2005). CONTRACTOR shall not be required to name OWNER, its officers, agents, or employees, as additional insureds for the purpose of providing indemnification for any liability arising out of the negligence, act, or omission of OWNER, its officers, agents, representatives, or employees.

SECTION 7 - Work by Others

7.1 OWNER may perform additional work related to the Project itself, or he may let other direct contracts therefor, which shall contain general terms and conditions similar to these. CONTRACTOR shall afford the other contractors who are parties to such direct contracts (or OWNER, if it performs the additional work), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate its Work with theirs.

7.2 If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor (or OWNER), CONTRACTOR shall inspect and promptly report to CONSULTANT in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure so to report shall constitute an acceptance of the work as fit and proper for the relationship of his Work except as to defects and deficiencies which may appear in the other work after the execution of his Work.

7.3 CONTRACTOR shall do all cutting, fitting, and patching of Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of CONSULTANT and of the other contractors whose work will be affected.

7.4 If the performance of additional work by other contractors or OWNER is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by OWNER or others causes an additional expense or entitles it to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Sections 11 and 12.

7.5 Work by CONTRACTOR and work by others should be coordinated and expedited by OWNER or his representative to minimize time delays and additional cost to CONTRACTOR.

SECTION 8 - OWNER'S Responsibilities

8.1 OWNER shall issue all communications to CONTRACTOR through CONSULTANT. If OWNER has not contracted with a design professional as CONSULTANT, OWNER will designate an employee or other representative of OWNER to act on its behalf with respect to the Project. OWNER shall give thorough consideration to all sketches, working drawings, specifications, offers and other documents submitted by CONSULTANT or CONTRACTOR, and render its decisions within a reasonable time so as not to interrupt or delay the progress of the Project.

8.2 In case of termination of the employment of CONSULTANT, OWNER shall appoint a replacement CONSULTANT and notify CONTRACTOR of the appointment. The replacement CONSULTANT shall have the status of the former CONSULTANT under the Contract Documents. The OWNER'S appointment of a replacement CONSULTANT shall be final. CONTRACTOR shall have no claim for damages, including but not limited to additional Contract Time, home and local office overhead, or additional cost based on the OWNER'S substitution or replacement of the CONSULTANT.

8.3 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in Section 14.

8.4 OWNER'S responsibilities in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Section 4. Section 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting performance of the Work which have been relied upon by CONSULTANT in preparing the Project Technical Specifications and Drawings attached to the Bid Documents or the Work Order.

8.5 OWNER'S responsibility with respect to certain inspections, tests and approvals is set forth in Section 13.

8.6 In connection with OWNER'S right to stop Work or suspend Work, see Sections 13 and 15. Section 15.2 deals with OWNER'S right to terminate services of CONTRACTOR under certain circumstances.

SECTION 9 – CONSULTANT’S Status during Construction

9.1 OWNER'S Representative

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

9.2 Visits to Site

CONSULTANT will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CONSULTANT'S efforts will be directed toward providing assurance for OWNER that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, CONSULTANT will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

9.3 Project Representation

If OWNER and CONSULTANT agree, CONSULTANT will furnish a Resident Project Representative to assist CONSULTANT in observing the performance of the Work. In such event, the duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in writing by the OWNER to the CONTRACTOR. If OWNER designates another agent to represent OWNER at the Site who is not CONSULTANT'S agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in writing by the OWNER to the CONTRACTOR.

9.4 Clarifications and Interpretations

CONSULTANT will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as CONSULTANT may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor, as provided in Section 11 and Section 12.

9.5 Rejecting Defective Work

CONSULTANT will have authority to disapprove or reject Work which is Defective, as provided in Section 13, and will also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

9.6 Shop Drawings, Change Orders and Payments.

9.6.1 In connection with CONSULTANT'S responsibility for Shop Drawings and samples, see Section 6.

9.6.2 In connection with CONSULTANT'S responsibilities as to Change Orders, see Sections 10, 11, and 12.

9.6.3 In connection with CONSULTANT'S responsibilities with respect to Applications for Payment, etc., see Section 14.

9.7 Decisions on Disagreement

9.7.1 CONSULTANT will be the interpreter of the requirements of the Contract Documents and will evaluate the performance thereunder by CONTRACTOR. In its capacity as interpreter and evaluator, CONSULTANT will exercise its best efforts to ensure good faith performance by both OWNER and CONTRACTOR. CONSULTANT will not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes, and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred to CONSULTANT for a decision, which will be rendered in writing within a reasonable time.

9.7.2 The rendering of a decision by CONSULTANT pursuant to Section 9.7.1 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Section 14.12) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such claim, dispute or other matter.

9.7.3 CONTRACTOR shall continue his performance of the Work and adhere to applicable progress schedules during all disputes or disagreements with the OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted in Section 16 or as CONTRACTOR and OWNER may otherwise agree in writing.

9.8 Limitations on CONSULTANT'S Responsibilities

9.8.1 Neither CONSULTANT'S authority to act under this Section 9 or elsewhere in the Contract Documents nor any decision made by CONSULTANT in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CONSULTANT 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.

9.8.2 Wherever 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 a requirement, direction, review or judgment of CONSULTANT as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that CONSULTANT shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Sections 9.8.3 and 9.8.4.

9.8.3 CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the CONTRACTOR'S work. CONSULTANT will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

9.8.4 CONSULTANT will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, or of the agents or employees of CONTRACTOR or any Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

9.8.5 Unless otherwise provided herein, CONSULTANT shall not be responsible for identification, handling, containment, abatement, or in any other respect, of any asbestos or hazardous material if such is present in connection with the Project. In the event that OWNER becomes aware of the presence of asbestos or hazardous material at the job site, OWNER shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify CONSULTANT, who shall then be entitled to cease any of its services that

may be affected by such presence, without any liability to CONSULTANT arising therefrom. If CONSULTANT becomes aware of the presence of asbestos or hazardous material at the job site, CONSULTANT shall immediately cease any of its Services that may be affected by such presence, without any liability arising therefrom, and inform OWNER of the presence of such materials. CONSULTANT will work with OWNER, where possible, to help find the appropriate personnel, whether it be OWNER'S staff, CONSULTANT'S staff, or another consultant, who can assist OWNER with disposal of the asbestos and/or hazardous materials.

SECTION 10 - Changes in the Work

10.1 Without invalidating the Agreement and without notice to any surety and without releasing any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work, including such increases or decreases in quantities of Bid items as OWNER determines to be necessary or desirable; these will be authorized by Change Orders. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Section 11 or Section 12 on the basis of a claim made by either party.

10.2 CONSULTANT may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and shall be binding on OWNER, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Section 11 or Section 12.

10.3 CONSULTANT with the OWNER'S approval or at the OWNER'S direction may issue a Field Order that will involve an adjustment in the Contract Price or the Contract Time. This type of Field Order is used to authorize changes in the Project in a timely manner and allow the CONTRACTOR to proceed with the Work without delays. This type of Field Order shall become a Change Order or part of a Change Order as soon as the total change in Contract Price and/or Contract Time is established.

10.4 Additional Work performed without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Section 6.13 and except as provided in Sections 10.2 and 13.4.2.

10.5 OWNER shall execute appropriate Change Orders prepared by CONSULTANT covering changes in the Work which are covered by a Field Order, or required by OWNER, or required because of unforeseen physical conditions or emergencies, or because of uncovering Work found not to be Defective, or as provided in Section 11.9, or because of any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is recommended by CONSULTANT and accepted by OWNER. When possible and practical the OWNER shall process Change Orders in a timely manner to facilitate payment to the CONTRACTOR for completed authorized changes in the Work.

10.6 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any bond to be given to the surety, it will be CONTRACTOR'S responsibility to so notify the surety, and the amount of each applicable bond shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to OWNER.

SECTION 11 - Change of Contract Price

11.1 Compensation

11.1.1 The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work under a Single Project Contract or a Work Order. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at the CONTRACTOR'S expense without change in the Contract Price. The Contract Price may only be changed by a Change Order.

11.1.2 A change in the rate of gross receipts tax that takes effect during the performance of the Contract shall be allowed as a corresponding change in the Contract Price, without a Change Order, provided however, that OWNER'S payment to CONTRACTOR of such gross receipts tax rate change shall be only for progress payments or other billings submitted under the provisions of the Contract on or after the date the rate change goes into effect.

11.2 Claim for Change in Contract Price

Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER and CONSULTANT within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless CONSULTANT, in writing, allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by CONSULTANT if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Section 11.2.

11.3 Value of Work

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

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents and the total amount of increase or decrease in quantity of a Bid or Offer item does not vary more than twenty-five percent (25%) from the estimated quantity shown in the Bid Proposal for that Bid item or the Offer for that Offer item, by application of unit prices to the quantities of the items involved.

11.3.2 By mutual acceptance of a lump sum or unit prices for the Work covered by the Change Order.

11.3.3 On the basis of the Cost of the Work covered by the Change Order (determined as provided in Sections 11.4 and 11.5) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Section 11.6).

11.4 Items Included in Cost of Work

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

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR.

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

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

11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to OWNER who will then determine, with advice of CONSULTANT, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a Fee, the Cost of the Work shall be determined as provided herein (Sections 11.4 and 11.5). All subcontracts shall be subject to the other conditions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs as follows:

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

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

11.4.5.3 Rentals of all construction equipment, machinery and the parts thereof whether rented from the CONTRACTOR or other rental agencies if authorized by the CONSULTANT and approved by the OWNER. The rate for rental equipment, machinery and the parts thereof ("Water Authority Equipment Rental Rate") will be computed and paid by OWNER as follows:

- In cases where the piece of equipment to be used, whether specialized or not, is rented or leased from an outside agency and used in the execution of negotiated or force account work, a reasonable rental rate agreed upon in advance by the CONTRACTOR and the CONSULTANT may be allowed upon presentation of the rental agency's quotation. To the approved rental rate will be added the established Hourly Operating Costs as listed in the Rental Rate Blue Book for Construction Equipment (Blue Book) in effect at the time of equipment use. The Blue Book can be found at www.equipmentwatch.com. To this total an additional amount may be added for administering this item which shall be a fixed amount negotiated by the parties not to exceed ten percent (10%) and approved in writing by means of a Change Order signed by the parties.

- In cases where the piece of equipment, whether specialized or not, is owned by CONTRACTOR, the rental rate will be computed as follows:

Water Authority Equipment Rental Rate = Blue Book Hourly Rate X 0.50 + Blue Book Hourly Operating Cost.

The rates shown in the Blue Book have been computed from current costs of ownership and operation related to the average number of hours of usage per year. The rates shown do not include operating personnel. The ownership cost represents the total cost of depreciation, interest, insurance, taxes, storage, etc., reduced to an hourly rate. Estimated operating cost/hour includes fuel, lubricants, tires and other operating expendables, such as the percentage of mechanic's wages chargeable to preventive and field maintenance. The current Blue Book as modified above by OWNER shall apply for any machinery or special equipment (other than small tools), including fuel, lubricants and transportation costs and the use of which has been authorized by the CONSULTANT. Water Authority Equipment Rental Rates will be applied in accordance with the following guidelines:

- (1) Manufacturer's identification plates attached to equipment shall be used insofar as possible to determine identification and capacities of the designated items of equipment. Where the equipment is not provided with such plates, the CONTRACTOR will be required to supply written statements certifying the equipment identification and capacity as shown by his equipment inventory. The CONSULTANT'S records shall be completed in full to include type, capacity and horsepower for the equipment used in order to properly correlate the equipment with that described in the Blue Book schedule. The listed Blue Book rates are the maximum for equipment of modern design and in good working condition. Equipment shall be so handled and used to provide normal output and production.
- (2) Most commonplace items of equipment are listed in the Blue Book. In cases where the piece of equipment to be used is not listed in the Blue Book, the rental rate will be established by requesting a rate from Equipment Guide-Book Company or by using the Blue Book rental rate for a comparable piece of equipment being used, as determined by the CONSULTANT. If the equipment used is of such age that it is not listed, then the most comparable machine shown in the Blue Book, as determined by the CONSULTANT, will be used.
- (3) Standard manufactured items identified by unit weight or section dimensions will be measured utilizing nominal weights or dimensions. Unless more stringently controlled by tolerances in cited Specifications, manufacturing tolerances established by the industries involved will be accepted.
- (4) "Move-in" and "move-out" charges required by the piece of equipment not available on the job will be included as part of the extra work at actual transportation cost if the particular piece of equipment is not moved onto the specific job under its own power. "Move-in" and "move-out" charges will be paid once each for any particular piece of equipment except in unusual circumstances which must be justified in writing and authorized by CONSULTANT. "Move-in" and "move-out" charges shall include all costs of loading and unloading.
- (5) Equipment rental rates for standby time, when authorized in writing by the CONSULTANT, will be one-half of the computed Water Authority Equipment Rental Rate less the Hourly Operating Cost. Under no circumstances shall it be assumed that idle equipment will be paid for under these standby provisions without authorization in writing from the CONSULTANT.
- (6) The regional difference percentage as described in the Blue Book will not be applicable.

(7) Overtime as described in the current Blue Book will not apply. All equipment used on extra work will be paid for at the regular hourly rate as determined by using the formula for the Water Authority Equipment Rental Rate.

11.4.5.4 Sales, use, or similar taxes related to the Work and for which CONTRACTOR is liable, imposed by any governmental authority.

11.4.5.5 Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments, and fees for permits and licenses.

11.4.5.6 Losses, damages, and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR'S Fee may be paid for these services in accordance with Section 11.6.2.

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

11.4.5.8 Minor expenses such as shipping and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for additional bonds and insurance paid by CONTRACTOR but which OWNER is required to pay in accordance with Section 5.3.

11.5 Not Included in Cost of Work

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

11.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the Site or in its principal office or a branch office for general administration of the Work and not specifically included in the schedules of job classifications agreed upon by OWNER and CONTRACTOR (Section 11.4.1) - all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

11.5.2 Expenses of CONTRACTOR'S principal and branch offices other than its office at the Site.

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

11.5.4 Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same, except the cost of premiums for additional bonds and insurance paid by CONTRACTOR but which OWNER is required to pay in accordance with Section 5.3.

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

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

11.6 CONTRACTOR'S Fee

The CONTRACTOR'S Fee which shall be allowed to CONTRACTOR for his overhead and profit shall be determined as follows:

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

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

11.6.2.1 For payroll, material, and equipment costs as described in Sections 11.4.1 and 11.4.2, the CONTRACTOR'S Fee shall not exceed ten percent (10%),

11.6.2.2 For Subcontractor payments as described in Section 11.4.3, the CONTRACTOR'S Fee shall not exceed ten percent (10%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%); and

11.6.2.3 No fee shall be payable on costs for special consultants as described in Section 11.4.4, on supplemental costs as described in Section 11.4.5, and on rentals of construction equipment and the like as described in Section 11.4.5.

11.7 Overhead and Profit

The amount of credit to be allowed by CONTRACTOR for any change which results in a net increase in cost for the Change Order OR the amount of credit to be allowed OWNER for any change which results in a net decrease in the cost for such Change Order shall include the combined overhead and profit of CONTRACTOR, as calculated in this Section 11.

11.8 Itemized Cost

Whenever the cost of any Work is to be determined pursuant to Sections 11.4 and 11.5, CONTRACTOR will submit, in form prescribed by CONSULTANT, an itemized cost breakdown together with supporting data.

11.9 Cash Allowances

11.9.1 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or Subcontractors and for such sums within the limit of the allowances as CONSULTANT may approve.

11.9.2 Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as he deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

11.10 Delays Due to SFPA Hearings

In the event a hearing is required pursuant to the provisions of the Subcontractors Fair Practices Act and a delay in the Work is caused as a result of a Subcontractor protesting its substitution, the CONTRACTOR shall not be entitled to an increase in the Contract Price or Contract Time.

11.11 Complete Compensation

The CONTRACTOR agrees that, by signing any Change Order, the compensation established in the Change Order shall comprise the total complete compensation due to the CONTRACTOR for the Work and Contract Time defined in the Change Order. The CONTRACTOR agrees that the Change Order is in full accord and satisfaction of all disputed compensation amounts and Contract Time including but not limited to compensation amounts and Contract Time for interruption of schedules, extended home or other office overhead, all other overhead, profit, and delay and impact claims or ripple effect, attributable to those matters included within the Change Order, and that CONTRACTOR'S execution of the Change Order is a waiver of any reservation of claim for additional compensation, increase in Contract Price and Contract Time with respect to the Change Order.

SECTION 12 - Change to the Contract Time

12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and CONSULTANT within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless CONSULTANT allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by CONSULTANT if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. No claim for adjustment in the Contract Time will be valid if not submitted in accordance with this Section 12.1.

12.2 The Contract Time will be extended in an amount equal to the time lost due to delays beyond the control of the CONTRACTOR if the CONTRACTOR makes a claim therefor, as provided in Section 12.1. The CONTRACTOR shall not be entitled to additional time to perform the Contract beyond the number of days indicated in the Change Order for the matters included within the Change Order and the attachments thereto and the CONTRACTOR shall not be entitled to additional costs, overhead, profit, extended or other office overhead related to any time, interruption of schedules or other delay or impact claim or ripple effect attributable to the matters included in the Change Order and the attachments thereto, except as specifically allowed in the Change Order. Delays that may be the basis for a Change Order include acts of neglect by any separate contractor employed directly by OWNER, abnormal weather conditions, acts of nature, labor disputes, among other similar items not under the control of the CONTRACTOR but shall not include severe weather conditions or acts of nature (acts of God) that are not abnormal, and acts, errors, or omissions caused by any agent, employee, any tier of Subcontractors, suppliers, or manufacturers or other person or entity under the control or supervision of the CONTRACTOR or any tier of Subcontractors, suppliers or manufacturers who have contracted with the CONTRACTOR. This Section shall also apply to Change Orders indicating "no" or "zero" days additional Contract Time.

12.3 All time limits stated in the Contract Documents are of the essence of the Contract. The conditions of this Section 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

12.4 CONTRACTOR is entitled to complete the Work early, but unless otherwise provided in the Contract Documents, shall not be entitled to additional compensation therefor. If an incentive is provided for early completion, CONTRACTOR shall not be entitled to such incentive if prevented from achieving early completion as a result of delays caused by contractors, individuals or entities outside the control of OWNER.

SECTION 13 – Quality of Work

13.1 Warranty and Guarantee

13.1.1 CONTRACTOR warrants and guarantees to OWNER that all Work will be in accordance with the Contract Documents and shall not be Defective Work. CONTRACTOR further warrants and guarantees to OWNER that all materials and equipment or other elements of the Work shall be new and unused prior to installation or delivery to OWNER unless otherwise specified in the Contract Documents. Prompt notice of all defects identified by CONSULTANT or OWNER shall be given to CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Section 13.

13.1.2 Payment for Defective Work: Whenever CONTRACTOR is required to pay for costs of Defective Work in this Section 13, OWNER shall be entitled to deduct such costs from the Contract Price. In the event the costs of correcting or removing and replacing Defective Work occurs after final acceptance and payment or should the balance of the Contract Price payable to CONTRACTOR be insufficient to pay OWNER, CONTRACTOR shall pay to OWNER all such costs.

13.2 Tests and Inspections

13.2.1 In General:

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

13.2.1.2 If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by some public body, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish CONSULTANT the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER'S or CONSULTANT'S acceptance of a supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work. All other inspections, tests, and approvals required by the Contract Documents shall be performed by organizations acceptable to OWNER and CONTRACTOR and the costs thereof shall be borne by OWNER unless otherwise specified.

13.2.1.3 Neither observations by CONSULTANT nor inspections, tests, or approval by persons other than CONTRACTOR shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the requirements of the Contract Documents.

13.2.1.4 All inspections, tests or approvals other than those required by laws or regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER (or by CONSULTANT if so specified).

13.2.2 Laboratory Testing:

13.2.2.1 Job Mix Formulae and Design Mixes. The preparation of job mix formulae and design mixes together with necessary sampling and testing as required for this Contract shall be at CONTRACTOR'S expense. Such sampling and testing shall be performed by an approved testing laboratory under the direct supervision of a New Mexico Registered Professional Engineer. Mix design and job mix formulae submittals shall state the methods used in preparing the design or formulae together with substantiating data and graphic representations as appropriate, shall respond to all appropriate, pertinent material, shall meet requirements listed in

the Specifications, and shall give recommendations for job procedures and job mix tolerance limits necessary to give reasonable assurance that the Specification requirements will be met in the field, when appropriate. Unless specified otherwise in the Specifications, all job mix formulae and design mixes, and material tests relating thereto shall be based upon tests conducted no more than 12 months prior to the date the mix design is submitted.

13.2.2.2 Materials or Manufactured Items. Testing of materials or manufactured items shall be at CONTRACTOR'S expense. Tests for materials or manufactured items shall be certified as meeting all Specifications by an approved testing laboratory under the direct supervision of a professional engineer registered in the state of manufacture or a testing laboratory approved by CONSULTANT. Materials or manufactured items that require, as specified herein, either a certificate of compliance or analysis or both, stating that the materials comply in all respects with the requirements of the Specifications shall not be installed before the certificates are submitted to the CONSULTANT. The certificates shall be signed by a person having legal authority to bind the supplier or manufacturer.

13.2.3 Field Testing:

13.2.3.1 The field testing of all locally processed or produced materials directly incorporated into the Work, including but not limited to the establishment of density curves representative of materials to be used in the embankment, subgrade and backfilling operations and compliance test will be paid by OWNER. All such field testing required in the Contract Documents shall be paid by OWNER, provided that such payment shall be made by OWNER directly to the testing agency and CONTRACTOR shall not be entitled to any additional fees, markup or percentage of the Contract Price for such payment by OWNER. In the event the initial testing shows Defective Work, materials, supplies or equipment, all subsequent testing shall be at CONTRACTOR'S sole expense. The CONTRACTOR shall pay for such subsequent testing directly to the testing agency. In the event the CONTRACTOR fails to make such payment, the provisions of Section 13.1.1 shall apply. CONSULTANT shall determine the number, type and location of tests. CONTRACTOR shall furnish, incidental to this Contract and at no extra cost to OWNER, necessary equipment, tools and labor, except testing equipment, to assist the testing agency in the performance of field tests. Copies of all laboratory and field tests shall be forwarded to CONTRACTOR, CONSULTANT, and OWNER.

13.2.3.2 In the event any Work is covered contrary to the Contract Documents or to the written request of the CONSULTANT, the CONTRACTOR shall nonetheless give CONSULTANT timely notice of readiness of the Work for all inspections, tests, or approvals. If any such Work required to be inspected, tested, or approved is covered without written approval of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for observation; and such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CONSULTANT timely notice of his intention to cover such Work and CONSULTANT has not acted with reasonable promptness in response to such notice.

13.3 Access to Work

CONSULTANT and his representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

13.4 Uncovering the Work

13.4.1 In the event any Work is covered contrary to the Contract Documents or to the written request of the CONSULTANT, the CONTRACTOR shall bear or pay all direct, indirect, and consequential costs of uncovering (when applicable), exposure, observation, inspection, testing and reconstruction, including, but not limited to fees, charges and costs of engineers, architects, attorneys and other professionals. OWNER shall be entitled to a decrease in the Contract Price

when such inspection or test occurs prior to final payment and acceptance and CONTRACTOR shall pay OWNER for such cost in the event the inspection or test occurs subsequent to final payment and acceptance of the Work. CONSULTANT shall determine the number, type and location of tests.

13.4.2 In the event any Work has been covered which CONSULTANT has not specifically requested to observe or the Contract Documents do not specifically require to be observed prior to being covered or if CONSULTANT considers it necessary or advisable that covered Work be observed by CONSULTANT or inspected or tested by others, CONTRACTOR, at CONSULTANT'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as CONSULTANT may require, that portion of the Work in question, furnishing all necessary labor, materials and equipment. If it is found that such Work is Defective, CONTRACTOR shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Section 11. If, however, such Work is not found to be Defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Sections 11 and 12.

13.5 OWNER May Stop the Work

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

13.6 Correction or Removal of Defective Work

If required by CONSULTANT, CONTRACTOR shall promptly, as directed by the CONSULTANT, either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by CONSULTANT, remove it from the Site and replace it with non-Defective Work. CONTRACTOR shall bear and pay for all direct, indirect, and consequential costs of such correction, removal and replacement, including but not limited to fees, charges and costs of engineers, architects, attorneys, and other professionals incurred by OWNER and made necessary by such correction or removal and replacement. In the event CONTRACTOR fails, for any reason, to correct Defective Work or remove and replace rejected Defective Work within the time specified in CONSULTANT'S written notice to correct or replace Defective Work, OWNER shall be entitled to have such Defective Work corrected or replaced. CONTRACTOR shall bear and pay for all direct, indirect, and consequential cost of such correction or removal and replacement, including but not limited to fees, charges, and costs of engineers, architects and attorneys, and other professionals incurred by OWNER and made necessary by such correction or removal and replacement. OWNER shall be entitled to deduct such costs from the Contract Price. Consequential costs shall include, but are not limited to costs of correcting or removing and replacing all Work of others, or personal or real property of OWNER or others, that may be damaged or destroyed directly or indirectly by CONTRACTOR'S Defective Work or by the correction or removal and replacement of the Defective Work.

13.7 One Year Correction Period

If within one year after the date of Substantial Completion as identified in the Letter of Acceptance issued by the OWNER or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such Defective Work, or, if it has been rejected by OWNER, remove it from the Site and replace it with non-Defective Work. OWNER shall give CONTRACTOR written notice of OWNER'S discovery of Defective Work. Such notice shall be postmarked no later than thirty (30) days after the expiration of the one-year correction period or such longer correction period as required in the Contract Documents, provided that such notice shall concern only Defective Work identified by OWNER during the applicable correction period. CONTRACTOR shall bear and pay all direct, indirect, and consequential costs of such correction, or removal and replacement as provided in Section 13.6, above. If CONTRACTOR does not promptly comply with the terms of such instruction, or, in an emergency where delay would cause serious risk of loss or damage, OWNER may have the Defective Work corrected or the rejected Defective Work removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR, as provided in Section 13.6 above. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents. Consequential costs shall include, but are not limited to, costs of correcting or removing and replacing all Work of others, or personal or real property of OWNER or others, that may be damaged or destroyed directly or indirectly by CONTRACTOR'S Defective Work or by the correction or removal and replacement of Defective Work. OWNER'S costs of testing or exploratory Work conducted to verify the existence or extent of Defective Work shall also be a direct cost of correcting or removing and replacing Defective Work for which CONTRACTOR shall pay OWNER. Nothing in this Section 13.7 shall be construed as limiting the warranty and guarantee provisions pursuant to Section 13.1 above.

13.8 Acceptance of Defective Work

In the event of Defective Work identified at any time during the performance of this Contract, including but not limited to the correction period required in Section 13.7, the OWNER, at its sole option, shall be entitled to accept such Defective Work. CONTRACTOR shall bear, or pay to OWNER, all direct, indirect, and consequential costs attributable to OWNER'S evaluation of and determination to accept such Defective Work, including but not limited to fees, charges and costs of engineers, architects, attorneys, and other professionals. CONTRACTOR shall also pay to OWNER an amount equal to the loss of value of the Work due to the Defective Work, including, but not limited to diminished productivity, use, function, aesthetics, or life expectancy of the Work. These factors shall be evaluated by the CONSULTANT should such acceptance of Defective Work occur prior to final payment or acceptance. In addition, the CONSULTANT shall provide its evaluation and recommendation of the acceptance and the costs associated with the evaluation of acceptance of Defective Work. When acceptance of Defective Work occurs prior to final payment and acceptance OWNER shall be entitled to a decrease in the Contract Price. Should the acceptance of Defective Work occur after final payment and acceptance, or should the balance of the Contract Price payable to CONTRACTOR be insufficient to pay OWNER, CONTRACTOR shall pay OWNER all costs previously specified in this Section.

13.9 Work Neglected by CONTRACTOR

If CONTRACTOR fails within the time specified in the written notice of CONSULTANT to proceed to correct Defective Work or to remove and replace rejected Defective Work as required by CONSULTANT in accordance with Section 13.6, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other

provision of the Contract Documents, OWNER may, after seven (7) days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this Section OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work, suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the Site as may be necessary to enable OWNER to exercise the rights and remedies under this Section. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by CONSULTANT, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Section 11. Such direct, indirect, and consequential costs will include but not be limited to fees, charges, and costs of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of Work of others or the real or personal property of OWNER or others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S Defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

SECTION 14 - Payments to CONTRACTOR and Completion

14.1 Schedules

At least ten (10) days prior to the first Application for Payment, CONTRACTOR shall (except as otherwise specified in the Contract Documents), submit to CONSULTANT, unless waived by OWNER, a progress schedule, a final schedule of Shop Drawing submittals and where applicable, a Schedule of Values of the Work. These schedules shall be satisfactory in form and substance to CONSULTANT. The Schedule of Values shall include quantities and unit prices aggregating to the Contract Price, and for a Single Project Contract or major Work Order, shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

14.2 Application for Progress Payment

14.2.1 For a Single Project Contract or Major Work Order, payment to CONTRACTOR will be made from OWNER'S funds as follows:

Progress payments will be made monthly, in accordance with a process described in the Contract Documents, commencing with the month following the month in which OWNER notifies CONTRACTOR in writing to commence work (Notice to Proceed).

The Application for Payment will contain:

- (1) CONTRACTOR'S estimate of the value of Work done and the value (based on receipted invoices) of materials delivered and stored on the Site or stored at a location approved by the CONSULTANT ("unincorporated materials"), for the previous calendar month.
- (2) CONTRACTOR'S total earnings to date less a deductive adjustment for materials installed which were paid for previously as unincorporated materials.

The net payment due the CONTRACTOR shall be item (1) less item (2) above.

Applicable taxes shall be stated separately and will be paid by the OWNER at current rates. Applicable taxes shall be shown as a separate amount on each billing or request for payment made under the Contract and may not be billed more than sixty (60) days after Final Payment under the Contract.

14.2.2 For Work Orders which are not Major Work Orders, CONTRACTOR will be paid a single payment upon completion of the Work in accordance with Section 14.9 below.

14.2.3 A Work Order will be classified as Major if it requires more than six (6) weeks to complete or is estimated to cost over One Hundred Thousand Dollars (\$100,000.00).

14.3 CONTRACTOR'S Warranty of Title

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Terms and Conditions referred to as "Liens").

14.4 Review of Applications for Progress Payment

14.4.1 The CONTRACTOR and OWNER shall establish at the pre-construction conference the day of each month which shall be the last day the CONTRACTOR is entitled to include Work for the progress payment for the month. CONSULTANT'S approval of any payment requested in an Application for Payment will constitute a representation by CONSULTANT to OWNER, based on

CONSULTANT'S on-site observations of the Work in progress as an experienced and qualified design professional and on CONSULTANT'S review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, and subject to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval) and that CONTRACTOR is entitled to payment of the amount approved. The CONSULTANT shall within ten (10) days from receipt of the Application for Payment (1) approve and send the Application to the OWNER, or (2) disapprove and return the Application to CONTRACTOR, or (3) respond to CONTRACTOR by making inquiries about the Application such as requiring explanation or documentation in support of the Application. However, by approving any such payment, including the final payment, CONSULTANT will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to OWNER free and clear of any Liens.

14.4.2 CONSULTANT'S approval of final payment will constitute an additional representation by CONSULTANT to OWNER that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in Section 14.10 have been fulfilled.

14.4.3 CONSULTANT may refuse to approve the whole or any part of any payment if, in its opinion, it would be incorrect to make such representations to OWNER. He may also refuse to approve any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved to such extent as may be necessary in CONSULTANT'S opinion to protect OWNER from loss because:

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

14.4.3.2 written claims have been made against OWNER or Liens have been filed in connection with the Work,

14.4.3.3 the Contract Price has been reduced because of Modifications,

14.4.3.4 OWNER has been required to correct Defective Work or complete the Work in accordance with Section 13.9,

14.4.3.5 of CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents,

14.4.3.6 of CONTRACTOR'S failure to make payment to any Subcontractor, or for labor, materials, or equipment,

14.4.3.7 of CONTRACTOR'S failure to submit progress schedules,

14.4.3.8 of CONTRACTOR'S failure to maintain record information or As-Built Drawings pursuant to Section 6.10, or

14.4.3.9 CONTRACTOR'S failure to submit payrolls for employees and Subcontractors in compliance with State of New Mexico, Department of Work Force Solutions requirements.

14.5 Substantial Completion

14.5.1 When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall, in writing to OWNER and CONSULTANT, certify that the entire Work is substantially complete and request that CONSULTANT issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and CONSULTANT shall inspect the Work to determine the status of completion. If CONSULTANT or OWNER does not consider the Work substantially complete, CONSULTANT will notify CONTRACTOR in writing giving his reasons therefor. If CONSULTANT considers the Work substantially complete, CONSULTANT will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a Punch List of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which he may make written objection to CONSULTANT as to any provisions of the certificate or attached Punch List. If, after considering such objection, CONSULTANT concludes that the Work is not substantially complete, CONSULTANT will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing, stating his reasons therefor. If, after consideration of OWNER'S objections, CONSULTANT considers the Work substantially complete, CONSULTANT will, within said fourteen (14) days, execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised Punch List) reflecting such changes from the tentative certificate as he believes are justified after consideration of any objections from OWNER.

14.5.2 After delivery of the tentative certificate of Substantial Completion and up through the time the CONSULTANT accepts CONTRACTOR'S Application for Final Payment and recommends the Application for Final Payment to the OWNER, CONTRACTOR shall continue to be responsible for security, maintenance, heat, utilities, damage to the Work, and Commercial General, Owner's and Contractor's Protective, and Workers' Compensation insurances.

14.5.3 OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the Punch List.

14.6 Liquidated Damages

14.6.1 Liquidated Damages up to Time of Substantial Completion: Liquidated damages, in the amount per day shown in the Bid Documents or Request for Offers, will be assessed against CONTRACTOR for each calendar day, or portion thereof, that the Work does not start on the date specified in the Contract Documents, and has not achieved Substantial Completion after expiration of the agreed time allotted for construction, including any approved extensions of time.

14.6.2 Liquidated Damages Following Substantial Completion: Further, liquidated damages in the amount per day shown in the Bid Documents or Request for Offers will be assessed against CONTRACTOR for each calendar day that all Punch List items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the agreed time allotted for completion and correction, including any approved extensions of time. These liquidated damages are cumulative.

14.6.3 Deduction: The sum of the liquidated damages will be deducted from any monies due CONTRACTOR. If no money is due CONTRACTOR, said sum may be recovered by OWNER from CONTRACTOR or CONTRACTOR'S surety, or from both combined. These deductions are to cover liquidated damages to OWNER for losses to OWNER that include, but are not limited to, additional expenses of contract administration, overhead and other costs resulting from failure of CONTRACTOR to OWNER complete the Work within the designated time, and are not to be considered as penalties. OWNER shall not be considered liable for any extra or additional payment to CONTRACTOR as a bonus or premium for early completion.

14.7 Partial Utilization

Use by OWNER of a completed portion of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.7.1 OWNER may at any time request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and CONSULTANT that said part of the Work is substantially complete and request CONSULTANT to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter OWNER, CONTRACTOR and CONSULTANT shall inspect that part of the Work to determine its status of completion. If CONSULTANT or OWNER does not consider that part of the Work to be substantially complete, CONSULTANT will notify OWNER and CONTRACTOR in writing giving reasons therefor. If CONSULTANT considers that part of the Work to be substantially complete, CONSULTANT will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a Punch List of items to be completed or corrected before final payment. After delivery of the tentative certificate of Substantial Completion for part of the Work and up through the time the CONSULTANT accepts CONTRACTOR'S Application for Final Payment and recommends the Application for Final Payment to the OWNER for that part of the Work, CONTRACTOR shall continue to be responsible for security, maintenance, heat, utilities, damage to the Work, and Commercial General, Owner's and Contractor's Protective, and Workers' Compensation insurances for that part of the Work. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which CONSULTANT has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the Punch List.

14.7.2 In lieu of the issuance of a certificate of Substantial Completion as to part of the Work, OWNER may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that CONTRACTOR shall continue to be responsible for security, maintenance, heat, utilities, damage to the Work, and Commercial General, Owner's and Contractor's Protective, and Workers' Compensation insurances for that part of the Work until completion of the remainder of the Work.

14.8 Final Inspection

Upon written notice from CONTRACTOR that the Project is complete, CONSULTANT will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Project is incomplete or Defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

14.9 Final Application for Payment

After CONTRACTOR has completed all such corrections to the satisfaction of CONSULTANT and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after CONSULTANT has indicated that the Project is acceptable (subject to the provisions of Section 14.12), CONTRACTOR may request final payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as OWNER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Project. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, materials and equipment for which a Lien could be filed, and that all payrolls, materials and equipment bills, and other indebtedness connected

with the Project for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

14.10 Final Payment and Acceptance

14.10.1 If, on the basis of CONSULTANT'S observation of the Work during construction and final inspection, and CONSULTANT'S review of the documentation to accompany the final Application for Payment -- all as required by the Contract Documents, CONSULTANT is satisfied that the Project has been completed and CONTRACTOR has fulfilled all obligations under the Contract Documents, CONSULTANT will, within ten (10) days after receipt of CONTRACTOR'S request for final payment, indicate in writing approval of payment and present the final Application for Payment to OWNER. Thereupon CONSULTANT will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of Section 14.12. Otherwise CONSULTANT will indicate in writing the reasons for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, in accordance with the requirements of the Procurement Ordinance, pay CONTRACTOR the amount approved by CONSULTANT.

14.10.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if CONSULTANT so confirms, OWNER shall, upon receipt of the final Application for Payment and recommendation of CONSULTANT, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If bonds have been furnished as required in Section 5.1 the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CONSULTANT with CONTRACTOR'S request for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.11 CONTRACTOR'S Continuing Obligation

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CONSULTANT, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by CONSULTANT pursuant to Section 14.10, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

14.12 Waiver of Claims

The making and acceptance of final payment shall constitute:

14.12.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from Defective Work appearing after final inspection pursuant to Section 14.8 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

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

14.13 Items for Payment

CONTRACTOR will be required to complete the Work specified herein and as shown on the Drawings in accordance with the Contract and at the Contract unit prices established for each of the payment items listed in the Contract Documents. All Work which is subsidiary and pertinent to a particular Bid or Offer item and is not listed as a separate Bid or Offer item shall be completed as a part of the Bid or Offer item to which it applies. In case of dispute as to the Bid or Offer item to which subsidiary or pertinent Work applies, CONSULTANT'S decision shall govern.

14.14 Electronic Payments

All payments made pursuant to this Contract shall be made by direct deposit to CONTRACTOR'S account. CONTRACTOR shall submit, with its executed Contract Documents, all documentation required by OWNER to allow OWNER to make payments by this mechanism. ACH/Direct deposit stipulations and forms can be found on OWNER'S website.

14.15 Interest on Late Payments

CONTRACTOR shall be entitled to interest on any periodic payment or final payment because of a delay in payment by OWNER in accordance with the provisions of the Procurement Ordinance, as currently enacted or hereafter amended.

SECTION 15 - Suspension of Work and Termination

15.1 OWNER May Suspend Work

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and CONSULTANT which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR will be allowed an extension of the Contract Time directly attributable to any suspension if he makes a claim therefor as provided in Section 12.

15.2 OWNER May Terminate

15.2.1 The OWNER may terminate the Contract or, if applicable, a Work Order only, upon the occurrence of any one or more of the following events:

15.2.1.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.1.2 If CONTRACTOR is adjudged bankrupt or insolvent;

15.2.1.3 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.1.4 If CONTRACTOR makes a general assignment for the benefit of creditors;

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

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

15.2.1.7 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment);

15.2.1.8 If CONTRACTOR disregards laws or regulations of any public body having jurisdiction;

15.2.1.9 If CONTRACTOR disregards the authority of the CONSULTANT;

15.2.1.10 If CONTRACTOR otherwise violates in any material way any provisions of the Contract Documents;

15.2.1.11 If CONTRACTOR repeatedly fails to make prompt payments to Subcontractors for labor, materials, or equipment;

15.2.1.12 If CONTRACTOR is found to have engaged or is engaging in Unfair Business Practices as set forth in Section 2-376 of the Procurement Ordinance; or

15.2.1.13 Upon Debarment of CONTRACTOR by OWNER or an agency of the federal government or the State of New Mexico or a local public body of the State.

15.2.2 Should any one or more of the events described in Section 15.2.1 occur then OWNER may, without prejudice to any other right or remedy and after giving CONTRACTOR and his surety a seven (7) day written notice, terminate the services of CONTRACTOR, take possession of all materials, equipment, tools, construction equipment and machinery on the Project Site owned by CONTRACTOR and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the work all materials and equipment stored at the Project Site for which OWNER has paid CONTRACTOR, or which are paid for but stored elsewhere, and finish the Work by whatever method OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER shall be determined by OWNER and incorporated in a Change Order. OWNER shall not be required to obtain the lowest price for Work performed by or through OWNER under the provisions of Section 15.

Where CONTRACTOR'S services have been so terminated by OWNER, said terminations shall not affect any rights of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by OWNER due CONTRACTOR will not release CONTRACTOR from liability.

15.2.3 Upon seven (7) days' prior written notice to CONTRACTOR and CONSULTANT, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, CONTRACTOR shall be paid for all Work satisfactorily completed and expenses actually incurred and overhead and profit thereon. Profit and overhead shall not exceed the percentages established in Section 11 of these General Terms and Conditions. Amounts for local and home office overhead shall not be allowed.

15.2.4 In the event OWNER terminates the Contract pursuant to this Section 15.2 and an arbitrator determines that OWNER was not justified in terminating the Contract pursuant to Section 15.2.2, the termination shall then be deemed to be a termination for convenience pursuant to Section 15.4 and CONTRACTOR'S remedies are solely those contained in Section 15.4.

15.3 CONTRACTOR May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or CONSULTANT fails to act on any Application for Payment within thirty (30) days after it is submitted, or OWNER fails to pay CONTRACTOR any sum approved by CONSULTANT within thirty (30) days of its approval and presentation, then CONTRACTOR may, upon seven (7) days' prior written notice to OWNER and CONSULTANT, terminate the Contract and recover from OWNER payment for all Work satisfactorily completed and expenses actually incurred and overhead and profit thereon. Profit and overhead shall not exceed the percentages established in Section 11 of these General Terms and Conditions. Amounts for local and home office overhead shall not be allowed. In addition, and in lieu of terminating the Contract, if CONSULTANT has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may, upon seven (7) days' prior written notice to OWNER and CONSULTANT, stop the Work until he has been paid all amounts then due.

15.4 Termination for Convenience

Termination for Convenience of OWNER: The OWNER may terminate this Contract, in whole or in part, for the convenience of OWNER at any time by giving at least seven (7) days' written notice to CONTRACTOR. In the event this Contract is terminated for the convenience of OWNER, the CONTRACTOR shall not be entitled to any damages, including but not limited to loss of anticipated profits, and shall be entitled to compensation for Work satisfactorily completed and expenses actually incurred and overhead and profit thereon. Profit and overhead shall not exceed the percentages established in Section 11 of these General Terms and Conditions. Amounts for local or home office overhead shall not be allowed.

SECTION 16 - Dispute Resolution

16.1 Arbitration

Except as set forth below, any dispute concerning this Contract, or the performance, interpretation, or breach thereof, shall be settled by arbitration pursuant to the Uniform Arbitration Act, Section 44-7A-1 et seq. NMSA 1978.

The arbitrator shall have no power to render an award which has the effect of altering or amending or changing in any way any provision of this Contract. The award of the arbitrator shall be final and binding. Judgment upon any such award shall be rendered only by any state or federal court sitting in Bernalillo County, New Mexico. Any and all arbitration proceedings, including discovery ordered by the arbitrator shall take place in Bernalillo County, New Mexico. In any such arbitration, the arbitrator shall have the powers of a court having jurisdiction as well as all of the powers set forth in the Uniform Arbitration Act. Without limiting the generality of the foregoing, the arbitrator shall have the power to issue orders for injunctive relief.

16.2 Selection of the Arbitrator

The parties will work together in good faith to agree on an arbitrator. If the parties are unable to agree on an arbitrator, an arbitrator may be appointed by a judge of the New Mexico Second Judicial District Court in accordance with NMSA 1978 § 44-7A-12.

16.3 Injunctive Relief

OWNER and CONTRACTOR consent and agree to the issuance of any temporary restraining order or preliminary injunction, by any court sitting in Bernalillo County having jurisdiction, upon the application of any party to the arbitration. Such authority of a court to order injunctive relief shall terminate upon completion of the appointment of an arbitrator who will then have jurisdiction to issue orders for injunctive relief. Any party to the arbitration may apply to the arbitrator for issuance of an injunction or similar relief, and such application shall be heard by the arbitrator within ten (10) days after the application is filed. Any court in Bernalillo County, New Mexico having jurisdiction to render an order confirming the award of the arbitrator(s) shall have jurisdiction to enter an order confirming the issuance of such injunction and making it an order of the court.

16.4 Consolidation and Joinder

OWNER and CONTRACTOR consent to the joinder in arbitration of any party necessary for the complete resolution of all disputes arising out of the performance of contracts pertaining to the Work of the Project, including but not limited to the CONSULTANT, as applicable, and its Subcontractors and subconsultants, the CONTRACTOR's Subcontractors and suppliers, and any other interested party. OWNER and CONTRACTOR also consent to the consolidation of any arbitration under this Contract with any other arbitration involving the performance of contracts pertaining to the Work of the Project.

16.5 Arbitration Provision Required

The CONTRACTOR shall require this arbitration provision (with appropriate changes in description of the parties) in all subcontracts of services to be performed to complete this Contract and the consulting services contract with a private firm or individual for the Project shall also contain a provision substantially similar to Sections 16.1 through 16.8.

16.6 Notice of Demand

Notice of demand for arbitration must be filed in writing with the other parties to the dispute. . The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.7 Applicability of Section

This Section 16 shall be binding on the CONTRACTOR and OWNER unless superseded by mandatory law and/or regulations applicable to the Project, or as provided in this Section 16.7

The requirement of arbitration shall be null and void and of no effect in the event OWNER, or any entity it is required to indemnify, is named as a party in an action involving CONTRACTOR'S work. In such event, this Section 16 shall not prohibit the parties to that action from joining CONTRACTOR or asserting any appropriate claim, cross claim, or third-party claim against CONTRACTOR. The parties herein shall not be required to arbitrate in the event a dispute arises related to CONTRACTOR'S work or this contract, and a claim or suit is filed by a person or entity other than the principal parties to this agreement.

16.8 Arbitration Fees and Expenses

The parties shall equally share the fees and expenses of the arbitrator.

SECTION 17 - Wage Rates

17.1 Minimum Wage Compliance

CONTRACTOR and any Subcontractor performing Work under this Contract shall comply fully with the "Public Works Minimum Wage Act", Sections 13-4-10 et seq., NMSA 1978 and all amendments thereto. The minimum wages and fringe benefits to be paid by the CONTRACTOR and all Subcontractors to various classes of laborers and mechanics, shall be based upon the wages and benefits determined by the Director of the Labor Relations Division of the Workforce Solutions Department of the State of New Mexico to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality. CONTRACTOR and all Subcontractor, and any person acting as a contractor shall pay all mechanics and laborers employed on the site of the Project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those so determined to be the prevailing wage rates and prevailing fringe benefit rates issued for the Project.

17.2 Applicable Schedule

The minimum wage rates and fringe benefit rates which may be paid to workmen in each trade or occupation required for the Work either by CONTRACTOR or Subcontractor or by other persons doing or contracting to do the whole or part of the Work contemplated by the Contract shall be as set forth in the schedule of Minimum Wage Rates and Fringe Benefit Rates appearing in the Bid Documents or the Work Order, and the workmen employed in the performance of the Contract shall be paid not less than the applicable specified wage rates and fringe benefit rates as such are set forth in said schedule.

17.3 Extra Work

If OWNER orders CONTRACTOR to perform extra work or additional work which may make it necessary for CONTRACTOR or any Subcontractor under him to employ in the performance of such work any person in any trade or occupation for which no minimum wage rate is specified, OWNER will include in the Contract Change Order for such extra or additional work the minimum wage rate for such trade or occupation, and insofar as such extra or additional work is concerned, there shall be paid each employee engaged in the Work in such trade or occupation not less than the minimum wage rate included.

17.4 Posting Required

The prevailing wage rates and prevailing fringe benefit rates to be paid shall be posted by CONTRACTOR in a prominent and easily accessible place at the site of the Work. OWNER may withhold from CONTRACTOR so much of accrued payments as the amount of payments which have been made by OWNER to laborers and mechanics employed by CONTRACTOR or Subcontractor on the Work to make up the difference between the prevailing wage rates and prevailing fringe benefit rates required by the Contract to be paid laborers and mechanics on the Work and the wage rates and fringe benefit rates received by such laborers and mechanics and not refunded to OWNER.

17.5 Weekly Submittals

The CONTRACTOR and any Subcontractor performing Work shall submit certified copies of weekly payrolls to OWNER and the Department of Workforce Solutions Public Works Office not later than five (5) working days after close of the payroll period. Certified copies of payrolls shall also be submitted to CONSULTANT if so requested. The scale of wages must be posted by CONTRACTOR at the Project Site.

17.6 Wage Underpayments and Adjustments

CONTRACTOR agrees, in case of underpayment of wages to any worker on the Project, that OWNER may withhold out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked and that OWNER may disburse such amount so withheld by it, for and on account of CONTRACTOR to the employee to which such amount is due.

17.7 Failure to Pay Minimum Wage; Termination of Contract

In the event it is found by the New Mexico Department of Workforce Solutions Labor Relations Division that any laborer or mechanic employed by CONTRACTOR or Subcontractor on the Site of the Project covered by the Contract has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the wage rate or fringe benefit rate required by the Contract, OWNER may, by written notice to CONTRACTOR and his Subcontractor, if the violation involves the Subcontractor, terminate the right to proceed with the Work or the part of the Work as to which there has been a willful failure to pay the required wages or fringe benefits; and OWNER may prosecute the Work to completion by contract or otherwise, and CONTRACTOR and his sureties shall be liable to the State of New Mexico for any excess costs occasioned thereby. Any party receiving notice of termination of his contract or subcontract under the provisions of this Section may appeal the findings of the Director of the Labor Relations Division of the Department of Workforce Solutions, as provided in the Public Works Minimum Wage Act.

17.8 Federal Minimum Wages

In the event that any Work under this Contract involves federal funds, then the prevailing area Wage Rate Decision listed by the U.S. Department of Labor shall be made a part of this Contract. Whenever a conflict exists between the State and federal minimum hourly wage rates, the higher of the conflicting wage rates shall govern.

17.9 Registration of Contractors

CONTRACTOR and all Subcontractors shall comply with the provisions of Section 13-4-13.1 NMSA 1978, with regard to Registration of Contractors.

17.10 Public Works Apprenticeship & Training Act

CONTRACTOR and all Subcontractors shall comply with the provisions of Sections 13-4D-1 et seq. NMSA 1978, with regard to apprenticeship and training contributions and monthly compliance statements to be submitted to the New Mexico Department of Workforce Solutions.

17.11 Appeals

Any interested person may appeal any determination, finding or action of the Director of the New Mexico Workforce Solutions Department, made pursuant to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978], to the labor and industrial commission sitting as the appeals board] by filing notice of the appeal with the Department Director within fifteen (15) days after the determination has been issued or notice of the finding or action has been given as provided in the Public Works Minimum Wage Act.

SECTION 18 – Measurements

18.1 General

18.1.1 Measurement of Quantities for Unit Price Work: Unless otherwise specified, linear or area quantities of work such as grading, landscaping, paving, curb, gutter, walk, and other work of a similar nature shall be determined from measurements or dimensions of such work and computed in horizontal planes. However, linear quantities of underground cable, fencing, piling, and timber shall be considered as being the true length measured along the longitudinal axis thereof. For pipe work, see related Sections; but if the method of measurement for pipe work is not stated therein, it shall be measured along the longitudinal axis of the pipe in place from center of manhole to center of manhole. A station when used as a definition or term of measurement will be one hundred (100) linear feet.

18.1.2 Volumetric quantities shall be determined by the average end area method unless otherwise specified or agreed in writing between CONTRACTOR and OWNER.

18.2 Method of Measurement

18.2.1 Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular Sections of the Bid Documents or Work Order covering materials or types of work.

18.2.2 When material is to be paid for on a volume basis and it would be impracticable to determine a volume by the specified method of measurement or when requested by CONTRACTOR and approved by CONSULTANT, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by CONSULTANT and shall be agreed to by OWNER and CONTRACTOR before such method of measurement of pay quantities will be adopted.

18.2.3 Unless otherwise provided, when mineral aggregate or roadway material is being paid for by weight, deductions from pay quantities will be made for the weight of water in excess of three percent (3%) if the material is to be treated with bitumen and six percent (6%) if the material is to be waterbound.

18.3 Units of Measurement

Measurement shall be in accordance with U.S. Standard Measures. A pound shall be avoirdupois. A ton shall be two thousand (2,000) pounds. The unit of liquid measure shall be the U.S. gallon.

18.4 Certified Weights

All materials to be paid for at a contract unit price per ton shall be weighed on platform scales furnished by CONTRACTOR or his supplier of materials at CONTRACTOR'S expense or such materials may be weighed on certified public scales at CONTRACTOR'S expense. All scales shall be of adequate size to permit the entire vehicle to rest on the scale platform while being weighed and shall have the same accuracy as a certified public scale. Scales furnished by CONTRACTOR shall be installed on beams, piers, or foundations of sufficient strength and bearing to prevent the weighing mechanism supporting the scale platform from settling. The weighing facilities shall include a weatherproof scale house which has a minimum floor area of thirty-two (32) square feet and which is equipped with adequate heat and light.

SECTION 19 - Utilities

19.1 Policy on the Proximity of Water and Sewer Lines

19.1.1 Whenever possible, it is desirable to lay parallel water and sewer lines at least ten (10) feet apart horizontally, and the waterline should be at a higher elevation than the sewer. In cases where it is not practical to maintain a ten (10) foot separation, CONSULTANT, after consultation with OWNER may allow a deviation on a case-by case basis. Such deviation may allow installation of the sewer line closer to the waterline, provided the waterline is in a separate trench or on an undisturbed earth shelf located on one side of the sewer at an elevation such that the bottom of the waterline is at least eighteen (18) inches from the top of the sewer.

19.1.2 When water and sewer lines cross each other, the waterline shall be at least eighteen (18) inches above the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the waterline joints.

19.2 Existing Building Sewer Services or Water Service Connections, and Replacement of Mains

19.2.1 Where building service line connections to existing sewer mains and water mains are encountered, CONTRACTOR shall ensure that the service line will not be disturbed or damaged. Should any service line connection be broken during the construction of the new line, it shall be replaced by CONTRACTOR. In the case of a sewer service, the trench shall not be backfilled until required permits are obtained and the service line is inspected by code officials from the applicable jurisdiction and the property owner. In the case of a water service line, the trench shall not be backfilled until the service line is inspected by the Water Authority Construction Inspector. No extra compensation will be allowed CONTRACTOR for this item. Unless specifically provided otherwise, OWNER assumes no liability for damage to or replacement of building sewer and water service line connections.

19.2.2 When a new sanitary sewer main is required as a replacement for an existing line, the alignment of the new line coincides with the existing line and the grade of the new line is approximately at the same grade as the existing line or lower, then the existing line shall be removed or dealt with as ordered by CONSULTANT. The cost of this Work shall be paid for under the appropriate item in the Bid Documents or Work Order. CONSULTANT shall determine if it is necessary to pump sewage around the replacement work, or if it is possible to temporarily plug the sewer line during the replacement operation. In the case of by-pass pumping, it will be paid for as indicated in the Bid Documents or Work Order.

19.2.3 All Work performed on privately owned sewer line and service lines must be inspected by the code officials from the jurisdiction where the line is located.

19.3 Water Distribution System Shut-Off and Turn-On Procedures

19.3.1 No one without written permission or direct supervision of the Water Authority, may operate any valve or fire hydrant which will cause water to flow within, into or out of the existing system. This includes new waterlines and extensions to the water system which have not been accepted but are connected to the existing water system.

19.3.2 When new waterline tie-ins to the existing water system are required, an electronic request and a street map for the water shut-off or water turn-on shall be submitted to the Water Authority. Procedures and forms are available from the Water Authority or online at www.abcwua.org.

19.3.2.1 The request for a water shut-off or turn-on for a main designated as a distribution line must be submitted at least seven (7) working days before the date of the actual shut-off or turn-

on. Request forms received after 8:00 a.m. will be logged in and scheduled on the following working day and the seven (7) working day requirement will commence.

19.3.2.2 The request for a water shut-off or turn-on for a main designated as a transmission line, meter plan line, collector, or well collector line must be submitted at least fourteen (14) working days before the date of the actual shut-off or turn-on. Requests received after 8:00 a.m. will be logged in and scheduled on the following working day and the fourteen (14) working day requirement will commence.

19.3.2.3 The request for a water shut-off or turn-on for a San Juan Chama designated transmission line or any other water line in the vicinity of San Juan Chama lines will be required to follow the procedures stated in Water Authority Administrative Instruction No. 9 and must be submitted at least thirty (30) working days before the date of the actual shut-off or turn-on. Requests received after 8:00 a.m. will be logged in and scheduled on the following working day and the thirty (30) working day requirement will commence. CONTRACTOR shall complete the Request Form for Work Affecting San Juan Chama Transmission Lines and submit all required design documentation. The Water Authority Administrative Instruction No. 9 is available on the Water Authority website at www.abcwua.org.

19.3.3 The reason for a water shut-off or turn-on shall be detailed and descriptive.

19.3.4 Water shut-offs may have to be scheduled at night or on weekends to accommodate water customers and traffic flow.

19.3.5. Water shut-offs involving transmission, master plan, collector, well collector, or San Juan Chama lines may not be permitted from April 1st through September 30th due to the demand on the system. Construction schedules will need to be coordinated with the Water Authority when these types of waterlines are impacted. All subsurface work around San Juan Chama transmission lines require special procedures outlined in the Water Authority Administrative Instruction No. 9, available on the Water Authority website at www.abcwua.org.

19.3.6 If the water shut-off or turn-on cannot be done on the requested date, the Field Supervisor will notify CONTRACTOR as soon as possible. The Water Authority shall have the authority to cancel scheduled water shut-offs if the Field Supervisor determines that:

19.3.6.1 CONTRACTOR is not ready to start work and completion of the work will extend beyond the requested time;

19.3.6.2 CONTRACTOR is lacking the necessary equipment, parts, or materials on the job Site;

19.3.6.3 Any existing condition giving just cause to believe that the scheduled water shut-off will extend beyond the requested time.

19.3.6.4 Field operating conditions have changed which may impact the number of customers or fire hydrants in the shut-off or turn-on request.

19.3.7 Emergency Breaks: The Water Authority shall be notified immediately so that it can perform the shut-off.

19.4 Responsibility of the CONTRACTOR

19.4.1 CONTRACTOR shall be held responsible for all costs for the repair of any and all damage to the Work or to any utility (which is previously known and disclosed to CONTRACTOR by the utility) as may be caused by their operations. Utilities not shown on the Drawings to be relocated or altered shall be protected and maintained by CONTRACTOR. Utilities which are relocated by others in order to avoid interference with structures and which cross the Work shall be maintained

in their relocated positions by CONTRACTOR. All costs for such work shall be at CONTRACTOR'S expense without change in the Contract Price.

19.4.2 CONTRACTOR shall never unnecessarily interfere with or interrupt the services of any public or private utility having property within or adjacent to the streets, alleys and easements involved in the Work and shall take all necessary precaution and effort to locate and protect all underground conduit, cables, pipes, waterlines, sewers, structures, gas lines, trees, monuments, power lines, telephone and telegraph lines, traffic control devices and other structures, both below and above ground. CONTRACTOR shall give all public and private utility companies prior written notice, in no event less than forty-eight (48) hours, for any work that the CONTRACTOR contemplates which would interfere in any way whatsoever with the service of any existing public or private utility and Water Authority facilities. If such public or private utility does not cooperate for the protection of its services, CONTRACTOR shall notify CONSULTANT. Utility lines identified on plans shall be located by CONTRACTOR far enough in advance of construction work in order that the owner of such lines may raise, lower, realign or remove lines and structures, if necessary, and in order that CONSULTANT may make any line and grade changes necessary should the existing utility lines conflict with the Work under construction, providing such adjustments do not materially affect the Work. In the event an unplanned for conflict between an existing, but previously unidentified, utility line and new construction arises, both the owner of such line and the CONSULTANT will be notified immediately by CONTRACTOR. CONTRACTOR shall immediately report any damages to public or private property to the owner of the property involved, and to CONSULTANT.

19.4.3 CONTRACTOR shall repair or restore at its own expense any damage to public, Water Authority-owned, or private property, for which CONTRACTOR is directly or indirectly responsible, to a condition equal to that existing before damage. CONTRACTOR shall promptly notify its insurance carrier of such damage. If CONTRACTOR fails to give such notice to its insurance carrier or refuses to effect such repairs or restoration upon receipt of notice, OWNER may cause such repairs or restoration and deduct the cost thereof from monies due, or which may become due, the CONTRACTOR.

19.4.4 CONTRACTOR shall not remove, realign, or adjust any official traffic control device including stop signs, warning signs, or any other traffic or parking control signs. CONTRACTOR shall give the appropriate governmental agency three (3) working days' prior notice of any official traffic control devices that need to be moved.

19.5 Location of Existing Utilities

19.5.1 The public and private utility owners shall be responsible to locate their utilities and provide information stating the horizontal alignments of same. If field verification excavations are required, the utility owner will provide same in a timely manner. Utility locations may be obtained by calling the New Mexico One Call System, telephone 811, or (505) 260-1990, two (2) working days in advance.

19.5.2 If utilities are found to interfere with the permanent Project Work, or if for safety and/or to facilitate construction it may be necessary to remove exposed lines from the trenching prism, these utilities will not be relocated, altered, or reconstructed without the concurrence of the utility owner involved; or CONSULTANT may order changes in location, line, or grade of structures being built in order to avoid the utilities. The cost of such changes will be paid for under applicable Bid or Offer items.

19.5.3 In certain cases where indicated on the Drawings, CONTRACTOR shall locate utilities in advance of his construction operations in coordination with the appropriate utility owner. In these cases, CONTRACTOR shall determine the exact locations of utilities, backfill the excavations and construct either temporary or permanent resurfacing over the backfill. The temporary resurfacing shall be constructed when the exploratory excavations are made in an area located within the

proposed Project excavations. Permanent resurfacing, when specified, shall be constructed when the exploratory excavations are made in an area located outside the proposed Project excavation and shall be constructed in accordance with any applicable ordinances, laws or regulations of the jurisdiction in which the excavation will take place. Said permanent resurfacing shall be of the type and thickness specified or as field conditions may otherwise require. In either case, the excavations shall be backfilled by the methods specified and to the relative density specified.

19.5.4 This exploratory excavation work shall be performed as soon as practical, and in any event, a sufficient time in advance of construction to avoid possible delays to CONTRACTOR'S Work. All costs for making such exploratory excavations (including the backfilling and the resurfacing as specified herein) shall be at CONTRACTOR'S expense without change in the Contract Price.

19.6 Unknown Utilities Disclosed During the Contract Work

In the event that a utility is disclosed subsequent to the award of the Contract, such utility not being indicated on the Drawings, or in the event that an existing utility is found to be in a materially different location than shown on the Drawings and thus requires additional work on the part of CONTRACTOR for its maintenance, relocation or support, the necessary alteration, relocation, proper support and protection shall be done and paid for as follows:

19.6.1 When said utility is found to occupy the space to be occupied by a part of the permanent Work to be constructed or when this utility is, in the opinion of CONSULTANT, in such close proximity to the new Work as to require the relocation or alteration of said utility, CONTRACTOR shall arrange with the utility owner for such relocation or alteration as directed by CONSULTANT.

19.6.2 When any portion of the utility is in close proximity and more or less parallel to a structure or conduit, CONTRACTOR shall advise the utility owner, and in cooperation with the utility owner, provide and place the necessary support for proper protection to ensure continuous and safe operation of the utility structure. All costs for such Work shall be borne by CONTRACTOR.

19.7 Abandoned Utilities

19.7.1 Unless otherwise specified or directed, CONTRACTOR shall remove all interfering portions of utilities which are shown on the Drawings as "abandoned" or "to be abandoned in place" and which interfere with the construction of the Project. All abandoned waterlines shown on the Drawings as "abandoned" or "abandoned in place" or found during construction shall be removed or capped at a minimum, unless otherwise specified. All costs involved in said removals shall be included in the prices bid or offered for the various items of Work. All such abandoned utilities removed by CONTRACTOR shall be disposed of or recycled.

19.7.2 Where utilities are shown on the Drawings as "abandoned" or "to be abandoned in place," it shall be the CONTRACTOR'S responsibility to contact the utility company involved within forty-eight (48) hours prior to excavating around such utilities, to ascertain that the abandonment of the utility has been completed.

19.8 Coordination for Relocation by Others

19.8.1 Where removal or relocation of facilities by others is shown on plans or found necessary through exploratory excavations, CONTRACTOR shall coordinate its Work with that of the affected owner to minimize the scheduling impact on both parties.

19.8.2 Where parties other than CONTRACTOR are responsible for the relocation of utilities and a delay in CONTRACTOR'S Work is caused by the failure on the part of said parties to remove or relocate such utilities in time to prevent such delay, or by any action or lack of action on the part of OWNER, it shall be understood that CONTRACTOR shall not be entitled, as a result of such delay to his Work, to damages or additional payments over and above the Contract Price. If

delays in CONTRACTOR'S work are caused by the reasons mentioned herein, CONTRACTOR shall be entitled to an extension of time. The length of such extension of time will be determined by CONSULTANT with consideration as to the effect of the delay on the Project as a whole.

19.8.3 In order to minimize delays to CONTRACTOR caused by the failure of other parties to relocate utilities which interfere with new facilities, CONTRACTOR upon request to CONSULTANT may be permitted to temporarily omit the portion of the Work affected by the utility. The portion thus omitted shall be constructed by CONTRACTOR immediately following the relocation of the utility involved.

SECTION 20 - Construction Traffic Control

20.1 Traffic Control Requirements

20.1.1 All construction signing, barricading, and channelization shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) latest edition and with applicable ordinances, laws and regulations adopted by the jurisdiction where the construction will occur and the Project Technical Specifications contained in the Bid Documents or Work Order. It shall be the responsibility of the CONTRACTOR to ensure that all such signing, striping, barricading and channelization is installed, altered, or removed as required by this Section. The construction traffic control set-up shall be by an American Traffic Safety Services Association (ATSSA), or equivalent, certified Traffic Control Supervisor (TCS) or Traffic Control Technician (TCT). The CONTRACTOR is responsible for all barricading.

20.1.2 CONTRACTOR shall at all times comply with the following:

- Standards and requirements set forth in the MUTCD, latest edition.
- Any ordinances, laws and regulations of the jurisdiction in which the construction will occur which are applicable to barricading.
- All applicable Sections of Project Technical Specifications and Drawings and the Referenced Standard Specifications
- National Highway Cooperative Research Program (NHCRP) Report 350.

Failure to comply with any of these items will be adequate cause for the applicable governmental agency and the Water Authority to revoke all permits and to cease all Work on any construction project. Work will not resume until all requirements are addressed and approved by the CONSULTANT and the applicable governmental agency.

20.2 Permitting

20.2.1 CONTRACTOR must obtain from the applicable governmental agency an excavation and/or barricading permit before engaging in any construction, maintenance, or repair work in any right-of-way. Emergency work that would preserve life or property is excluded with the understanding that a permit shall be obtained within 24 hours.

20.2.2 CONTRACTOR shall at the time of permit request, submit for approval by the applicable governmental agency, a traffic control plan in accordance with the agency's requirements. The CONTRACTOR shall inform in writing all businesses and residents directly affected by the construction at least two (2) days prior to the start of construction. Such notice shall include a name and telephone number of the CONTRACTOR'S representative who is available 24 hours a day, seven (7) days a week.

20.2.3 CONTRACTOR shall not perform any Work until all permits, rights-of-way or easements necessary for completion of the Work are secured, including all drilling, boring, or jacking operations.

20.2.4 Unless otherwise approved by the applicable governmental agency, all work in arterial roadways shall be on a continuous, 24 hours per day basis until completed. In other instances, depending on the location, type of project, duration of project, or other extenuating circumstances, the applicable governmental agency may require extended hour construction or restricted hour construction.

SECTION 21 – Project Signs and Publicity

21.1 *Project Construction Signs.*

21.1.1 General: Unless otherwise provided in the Contract Documents, CONTRACTOR shall provide materials for, install, and maintain for the duration of the construction Project, one Project construction sign for each travel direction on arterial or collector streets approaching the Project. These signs shall be installed subsequent to the award of the Contract but not less than seven (7) days prior to the expected start of the Construction Work.

The sign screening(s) shall be placed on one side of 1/2" thick 4'x8' marine grade plywood. Each sign shall be mounted on a minimum of two 4"x4" posts, with the bottom of the sign four (4) feet above grade. The sign(s) shall be mounted level and at location(s) designated by the CONSULTANT. Project sign placement shall not impede safe sight distance.

21.1.2 Colors, Letter Sizes, and Additional Information: OWNER will furnish CONTRACTOR with the information and format to be included on the sign(s), including the names of the Project, CONSULTANT and CONTRACTOR and the name and telephone number of the Project Manager. CONTRACTOR shall be responsible for providing the contact information to the sign company and obtaining the sign screening(s) to be placed on the plywood.

21.2 *Notice of Construction Activity*

For Projects affecting travel on arterial or collector streets, CONTRACTOR shall place, two (2) days prior to lane closure, a variable message board, one for each direction of closure, in accordance with the Referenced Standard Specifications.

21.3 *Project Construction Signs and/or Variable Message Boards*

If a Project sign and/or a variable message board is required by a permitting office or OWNER the cost of such Project sign and/or variable message board shall be paid in accordance with the Specifications.

SECTION 22 - Affirmative Action, Equal Employment Opportunity and

Nondiscrimination Requirements and Notice

22.1 Requirements

22.1.1 During the performance of this Contract CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, national origin, ancestry, gender, gender identify, pregnancy, childbirth, condition related to pregnancy or childbirth, physical or mental disability, serious medical condition, or if CONTRACTOR employs fifty or more employees, spousal affiliation. CONTRACTOR will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, age, national origin, ancestry, gender, gender identity, pregnancy, childbirth, condition related to pregnancy or childbirth, physical or disability, serious medical condition, or if CONTRACTOR employs fifty or more employees, spousal affiliation. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, disciplinary actions and grievances, rates of pay or other forms of compensation, other terms and conditions of employment and selection for training, including apprenticeship.

22.1.2 CONTRACTOR will make reasonable accommodation to the known disability of an otherwise qualified employee or applicant for employment as required by local, state, and federal law.

22.1.3 CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, sex, sexual orientation, age, national origin or ancestry, or disability.

22.1.4 CONTRACTOR will send to each labor union, organization, or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, and training programs, a notice advising the labor union, organization or workers' representatives and training programs of its Equal Employment Opportunity (EEO) policy and request their cooperation in meeting its EEO obligations. CONTRACTOR shall post copies of the notice in conspicuous places available to employees, applicants for employment, and the general public.

22.1.5 CONTRACTOR will comply with all provisions of the New Mexico Human Rights Act, as amended, Sections 28-1-1 et seq., NMSA 1978; Title VII of the U.S. Civil Rights Act of 1964, as amended; and all other laws and regulations related to civil rights which may apply. If CONTRACTOR is required by Section 22.2 below to take affirmative action steps and/or to submit a written Affirmative Action Plan, the guidelines found in Executive Order 11246, as amended, Revised Order No. 4 (41 CFR part 60-2 or 60-4 as appropriate), 41 CFR Part 60-250 and 41 CFR Part 60-741 will be followed in the preparation of its Affirmative Action Plan and in the performance of its Affirmative Action/Equal Employment Opportunity duties under this Contract.

22.1.6 CONTRACTOR will permit access to its books, records, and accounts by OWNER for the purpose of review or investigation to ascertain compliance with the New Mexico Human Rights Act, as amended, Sections 28-1-1 et seq., NMSA 1978; Title VII of the U.S. Civil Rights Act of 1964 as amended, other laws related to civil rights which may apply and Executive Order 11246, as amended, and the rules, regulations, and orders issued pursuant to those.

22.1.7 CONTRACTOR will post in conspicuous places available to employees, applicants for employment and the general public, nondiscrimination notices and any other notices required to be posted by municipal, state and federal agencies.

22.1.8 In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of the Contract or with any other applicable laws, rules or orders pertaining to Affirmative Action/Equal Employment Opportunity and Nondiscrimination, this Contract may be cancelled, terminated or suspended in whole or in part, CONTRACTOR may be declared ineligible for further Water Authority contracts, and such other sanctions as may be imposed and remedies invoked as otherwise provided by law.

22.1.9 CONTRACTOR will include the provisions of Paragraphs 22.1 through 22.8 above in every subcontract or purchase order so that such provisions shall be binding upon every Subcontractor. CONTRACTOR shall take such action, with respect to any subcontract, as necessary to enforce such provisions, including sanctions provided for noncompliance.

22.1.10 In the event that a state or federal agency is providing funding for this Contract and has specific Affirmative Action/Equal Employment Opportunity and Nondiscrimination requirements which are in conflict with these requirements, the specific state or federal requirements will govern.

22.2 Notice to Contractors

In addition to the Affirmative Action / Equal Employment Opportunity (EEO) and Nondiscrimination Requirements specified above, the requirements for specific affirmative actions and for EEO employment data reporting for construction and non-construction contractors are described in this Section. OWNER requires that CONTRACTOR and any Subcontractors holding contracts or subcontracts of \$10,000 or more shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of CONTRACTOR'S compliance with these requirements shall be based upon its effort to achieve maximum results from its actions. CONTRACTOR shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

22.2.1 Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which CONTRACTOR'S employees are assigned to work. CONTRACTOR shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out CONTRACTOR'S obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

22.2.2 Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when CONTRACTOR or its union have employment opportunities available, and maintain a record of the organization's responses.

22.2.3 Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to CONTRACTOR by the union or, if referred, not employed by CONTRACTOR, this shall be documented in the file with the reason therefor, along with whatever additional actions CONTRACTOR may have taken.

22.2.4 Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to CONTRACTOR'S employment needs. CONTRACTOR shall provide notice of these programs to the sources compiled under paragraph 22.2.1.2 above.

22.2.5 Disseminate CONTRACTOR'S EEO policy by providing notice of the policy to the unions and training programs and requesting their cooperation in assisting CONTRACTOR in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

22.2.6 Review, at least annually, the company's EEO policy and affirmative action obligations under these requirements with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

22.2.7 Disseminate CONTRACTOR'S EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing CONTRACTOR'S EEO policy with other contractors and subcontractors with whom CONTRACTOR does or anticipates doing business.

22.2.8 Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving CONTRACTOR'S recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, CONTRACTOR shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

22.2.9 Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of CONTRACTOR'S workforce.

22.2.10 Validate all tests and other selection requirements where there is an obligation to do so under 29 CFR Part 1607.

22.2.11 Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.

22.2.12 Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and CONTRACTOR'S obligations under these requirements are being carried out.

SECTION 23 - Compliance with Storm Drainage Discharge Requirements

23.1 Permit Required

23.1.1 If the Project construction will disturb one acre or more, or the discharges have been designated by the U.S. Environmental Protection Agency (EPA) as needing a permit under §122.26(a)(1)(v) or §122.26(b)(15)(ii), the Project is subject to the EPA's National Pollutant Discharge Elimination System (NPDES) Regulations for Storm Water Discharges, 40 CFR, Parts 122, 123 and 124, CONTRACTOR shall complete an electronic EPA **Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit, Form 3510-9**, or a Low Erosivity Waiver (LEW) form, if applicable, as directed on the EPA website: <http://cfpub.epa.gov/NPDES/stormwater/enoi.cfm>.

23.1.1.1 A LEW is applicable to short-term (generally less than 8 months) construction projects that disturb an area of 1 to 5 acres during the dry season (mid-October to mid-June). Submission of a LEW exempts contractors from preparation of a storm water pollution prevention plan (SWP3). CONTRACTOR may use the calculation tool on the EPA website to determine whether or not the site is eligible for a LEW: <http://cfpub.epa.gov/npdes/stormwater/lew/lewcalculator.cfm>

23.1.1.2 Note that routine maintenance projects, regardless of size, are exempt from submission of either a LEW or NOI as well as preparation of a SWP3. Routine maintenance projects are classified as those activities performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site. Such activities include water/sewer line breaks, street millings and overlays, replacement of water meter boxes, replacement of curb and gutter, and the like. These activities, however, are still subject to the requirements of the City of Albuquerque's Municipal Separate Storm Sewer System (MS4) permit and must comply with good housekeeping practices and prohibited discharges to the storm drain system.

23.1.2 CONTRACTOR shall submit electronic and hard copies of the SWP3 to OWNER for review and approval prior to completion of the NOI. CONTRACTOR shall also submit, at least fourteen (14) days prior to ground disturbance, a hard copy of the completed NOI form or a hard copy of the LEW form and one (1) electronic and one (1) hard copy of the approved Storm Water Pollution Prevention Plan (SWP3) to both of the following addresses:

Albuquerque Bernalillo County
Water Utility Authority
Water Resources,
Engineering & Planning Division
SWPPP Compliance Officer
One Civic Plaza NW, Room 5027
Albuquerque, NM 87102

City of Albuquerque
Department of Municipal Development
Engineering Division
Storm Water Quality Section
400 Marquette NW, Room 301
Albuquerque, NM 87103
(505) 768-3654

23.1.3 By completing an NOI, CONTRACTOR is certifying to the OWNER and to the City of Albuquerque that a SWP3 has been completed as per the NPDES Permit and is in CONTRACTOR'S possession and one copy has been delivered pursuant to Paragraph 23.1.2 above.

23.1.4 CONTRACTOR is the designated "Operator" of the NPDES Permit and is solely responsible for execution of the Project construction in conformance with NPDES Permit condition(s) and requirement(s), including Work performed by any Subcontractor(s). CONTRACTOR shall immediately correct conditions related to the Project that are in violation of NPDES permit requirements. Failure by CONTRACTOR to correct such conditions in a timely manner may subject CONTRACTOR to fines and/or penalties.

23.1.5 CONTRACTOR shall indemnify, defend and hold the OWNER harmless from any fines and/or penalties issued for violations of NPDES Permit conditions, except to the extent such indemnification would be inconsistent with Section 6.17.

23.1.6 In the event CONTRACTOR fails to comply with NPDES Permit requirements, the OWNER retains the right to enter upon the Project Site and perform corrective measures. Any costs associated with corrective measures shall be the responsibility of, and shall be paid by, CONTRACTOR. OWNER shall be entitled to deduct such costs from remaining contract amounts, and if insufficient contract amounts exist, CONTRACTOR shall reimburse OWNER for any deficiency.

23.1.7 An electronic EPA **Notice of Termination (NOT) of Coverage Under a NPDES General Permit for Storm Water Discharges Associated with Construction Activity, Form 3510-13**, will be completed by CONTRACTOR at the website in Paragraph 23.1.1 above, and send a copy to the addresses in Paragraph 23.1.2 above after final stabilization and final acceptance of the Project construction by OWNER.

23.2 Notification of Disallowable Discharges

23.2.1 CONTRACTOR shall notify the Water Authority Collections Section as specified in the plans and OWNER'S Project Manager immediately after learning of any construction related Disallowable Discharge event and provide a written report within 24 hours of the occurrence. At a minimum, the written report shall include the following information:

- Contractor name, contact representative, and phone number
- Time, date, address or exact location of the incident
- Source and cause of the release or spill along with a detailed description of the incident including any observed environmental impacts
- Types of material(s) released or spilled
- Quantity of materials released or spilled, including quantity contained, quantity uncontained
- Methods used for containment
- Medium (e.g. land, water) affected by release or spill
- Danger or threat posed by the release or spill
- Number and types of injuries or fatalities (if any)
- Weather conditions at the incident location
- Name of the carrier or vessel, vehicle number/railcar, pipeline, or other identifying information
- Whether an evacuation has occurred or was needed
- Other agencies notified or about to be notified
- Any other information that may help emergency personnel respond to the incident
- Any known future remediation that will be required as a result

23.2.2 A **Disallowable Discharge** as defined by the New Mexico Environment Department, is subject to the following rule: “[a]ny amount of any material in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property; or may unreasonably interfere with the public welfare or the use of property must be reported. This includes chemical, bio hazardous, petroleum-product, and sewage spills and incidents. In addition to recent spills, the discovery of evidence of previous unauthorized discharges, such as contaminated soil or ground water, also must be reported”.

SECTION 24 - Compliance with Air Quality Requirements

24.1 Applicability of ATC Permit

If the Project requires the construction of new operating equipment or processes or the modification of existing operating equipment or processes that are stationary sources of air contaminants, the Project is subject to the federal Clean Air Act, 42 U.S.C. Chapter 85, Sections 7401 *et seq.*; the New Mexico Air Quality Control Act, Sections 74-2-1 *et seq.* NMSA 1978; the Albuquerque/Bernalillo Joint Air Quality Control Board Ordinance, Sections 9-5-1-1 *et seq.* ROA 1994, Section 30-34 of the Bernalillo County Code; and the Albuquerque/Bernalillo Joint Air Quality Control Board Regulations, NMAC 20.11.41.

24.2 ATC Permit

24.2.1 If applicable, OWNER will apply for an Authority to Construct Permit (**ATC Permit**) as required by NMAC 20.11.41.1 of the Albuquerque/Bernalillo County Air Quality Control Board Regulations.

24.2.2 Work on the Project will not commence until the **ATC Permit** has been issued to OWNER and OWNER'S designee has issued a Notice of Air Quality Compliance to OWNER'S Project Manager and to CONTRACTOR.

24.3 Permit Violations; Indemnification

24.3.1 CONTRACTOR shall indemnify, defend and hold OWNER harmless from any fines and/or penalties issued for violations of **ATC Permit** conditions, except to the extent such indemnification would be inconsistent with Section 6.17

24.3.2 In the event CONTRACTOR fails to comply with **ATC Permit** requirements, OWNER retains the right to enter upon the Project Site and perform corrective measures. Any costs associated with corrective measures shall be the responsibility of, and shall be paid by, CONTRACTOR. OWNER shall be entitled to deduct such costs from remaining contract amounts, and if insufficient contract amounts exist, CONTRACTOR shall reimburse OWNER for any deficiency.

24.4 Applicability of FDCC Permit

If the Project requires the disturbance of three-quarters of an acre or more of land, the Project is subject to the federal Clean Air Act, 42 U.S.C. Chapter 85, Sections 7401 *et seq.*; the New Mexico Air Quality Control Act, Sections 74-2-1 *et seq.* NMSA 1978; the Albuquerque/Bernalillo Joint Air Quality Control Board Ordinance, Sections 9-1-5-1 *et seq.* ROA 1994, and BCO 94-5, Section 4; and the Albuquerque/Bernalillo Joint Air Quality Control Board Regulations, NMAC 20.11.20.

24.5 FDCC Permit

24.5.1 If applicable, CONTRACTOR shall apply for a Fugitive Dust Control Construction Permit (**FDCC Permit**) as required by NMAC 20.11.20.14 of the Albuquerque/Bernalillo County Air Quality Control Board Regulations by filing an application with the Air Quality Division of the City of Albuquerque Environmental Health Department.

24.5.2 The application for the **FDCC Permit** shall be in the name of CONTRACTOR.

24.5.3 CONTRACTOR shall be designated as the responsible person for compliance with NMAC 20.11.20 of the Albuquerque/Bernalillo County Air Quality Control Board Regulations.

24.5.4 Upon completion of the application for the **FDCC Permit**, CONTRACTOR shall give a copy of the application to OWNER'S designee for review and comment before CONTRACTOR

files the application with the Air Quality Division of the City of Albuquerque Environmental Health Department.

24.5.5 CONTRACTOR shall give a copy of the **FDCC Permit** to OWNER'S designee when the **FDCC Permit** is issued.

24.5.6 CONTRACTOR **shall** not commence construction of the Project until the **FDCC Permit** has been signed and posted as required by NMAC 20.11.20.14 of the Albuquerque/Bernalillo County Air Quality Control Board Regulations and OWNER'S designee has reviewed the **FDCC Permit** and issued a Notice of Air Quality Compliance to OWNER'S Project Manager and to CONTRACTOR.

24.5.7 CONTRACTOR is encouraged to visit the City of Albuquerque website at <http://www.cabq.gov/airquality/dust.html> for fugitive dust control permitting requirements, permit applications, dust control techniques, and dust control businesses.

24.6 FDCC Permit Violations; Indemnification

24.6.1 CONTRACTOR shall indemnify, defend and hold OWNER harmless from any fines and/or penalties issued for violations of **FDCC Permit** conditions, except to the extent such indemnification would be inconsistent with Section 6.17

24.6.2 In the event CONTRACTOR fails to comply with **FDCC Permit** requirements, OWNER retains the right to enter upon the Project Site and perform corrective measures. Any costs associated with corrective measures shall be the responsibility of, and shall be paid by, CONTRACTOR. OWNER shall be entitled to deduct such costs from remaining contract amounts, and if insufficient contract amounts exist, CONTRACTOR shall reimburse OWNER for any deficiency.

24.7 Contacts

The addresses and telephone and facsimile numbers for the OWNER'S Designee and the City's Air Quality Division are:

OWNER'S Designee:

Albuquerque Bernalillo County
Water Utility Authority
Manager – Plant Operations Division
Southside Water Reclamation Plant
4201 2nd Street SW
Albuquerque, New Mexico 87105
Telephone No. 505-289-3401
Cell: 505-331-6021

Air Quality Division:

City of Albuquerque
Environmental Health Department
Air Quality Division
P.O. Box 1293
Albuquerque, New Mexico 87103
Telephone No. 505-768-1972
Facsimile No. 505-768-2617

SECTION 25 – Miscellaneous

25.1 Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice to CONTRACTOR, OWNER or CONSULTANT, it shall be deemed to have been validly given if delivered in person or sent by a documented email or sent by certified or registered mail, return receipt requested, postage prepaid, to the individual or to a member of the firm or to an officer of the corporation, identified to receive a specific notice in the Contract Documents. If a specific individual is not identified, notice to the OWNER shall be given to the Project Manager.

25.2 Computation of Time

When any period of time is referred to in the Contract Documents by a certain number of days, such number of days shall be calendar days, unless otherwise specified, computed to include the first day of such period. Response time to notice given shall begin to run on the day the notice is delivered to the party that is required to respond.

25.3 General

25.3.1 All Project Technical Specifications and Drawings attached to the Bid Documents or Work Order, and other Contract Documents or copies thereof furnished by OWNER or CONSULTANT to CONTRACTOR are the property of OWNER and shall not be used in any manner by CONTRACTOR on any other Project.

25.3.2 The duties and obligations imposed by these General Terms and Conditions and the rights and remedies available hereunder and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by Sections 6.17, 13.1, 13.7, and 14.3 and the rights and remedies available to OWNER thereunder shall be in addition to and shall not be construed in any way as a limitation of any rights and remedies available to OWNER which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents. All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract.

25.3.3 Should OWNER or CONTRACTOR suffer injury or damage to his person or property because of any error, omission, or act of the other or of any of his employees or agents or others for whose acts he is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

25.3.4 The Contract Documents shall be governed by the laws of the State of New Mexico.

25.3.5 In all public works within New Mexico, whether constructed or maintained by the state or by a department, board or commission of the state or by any political subdivision of the state, or in any construction or maintenance to which the state or any political subdivision of the state has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico. In any case where, in the judgment of the different officers, boards, commissions or other authorities in this state vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works to the detriment of or loss to the state, the provisions of this section shall not apply.

25.4 Archaeological Salvage and Reports

25.4.1 Where objects of historical, archaeological, and paleontological value, including ruins, sites, buildings, artifacts, fossils, and other objects of antiquity are encountered within the areas on which CONTRACTOR'S operations are performed, CONTRACTOR shall postpone operations in the area, preserve such objects from disturbance or damage, and immediately notify OWNER and CONSULTANT of their existence and location.

25.4.2 Upon receipt of such notification, OWNER will arrange for the disposition of the objects or for the recording of data relative thereto and will notify CONTRACTOR when it is proper for him to proceed with the Work in the affected area. In this regard, OWNER may consult with appropriate State of New Mexico and/or federal agencies as to the nature and disposition of such objects. If CONTRACTOR is directed to perform any work in salvaging said objects, CONTRACTOR shall do so in accordance with the "Changes in the Work" provision of Section 10.

25.5 Assignment

CONTRACTOR shall not assign the Contract or sublet it as a whole nor assign any monies due or to become due to him hereunder, without the prior written consent of OWNER. Such consent shall not be a novation, and shall not relieve CONTRACTOR from full responsibility and liability for the Work and for the due performance of all of the terms and conditions of the Contract Documents.

25.6 Gender, Singular/Plural

Words of any gender used in the Contract Documents shall be held and construed to include any other gender, and words in the singular number shall be held to include plural, unless the context otherwise requires.

25.7 Maintenance of Records, Audits and Inspections

CONTRACTOR agrees to maintain all books, documents, papers, accounting records, correspondence and other materials related to the performance of this Contract for a period of three (3) years from the date of final payment under this Contract and to include this requirement in all subcontracts related to the Project. At any time during normal business hours and as often as OWNER deems necessary, CONTRACTOR shall make available to OWNER or CONSULTANT for inspection such materials and shall permit OWNER or CONSULTANT to audit, examine, copy and make excerpts or transcripts from such materials.

25.8 Ethics and Campaign Practices

CONTRACTOR warrants that it will perform the Contract in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and Rules (Section 37), the Water Authority Code of Conduct, Governmental Conduct Act Sections 10-16-1 through 10-16-18, NMSA 1978, the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, Sections 30-41-1 through 30-41-3 NMSA 1978, and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. CONTRACTOR warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Contract.

CONTRACTOR agrees to provide the Water Authority Board with any records or information pertaining in any manner to this Contract, or both, whenever such records or information are within the CONTRACTOR'S custody, are germane to an investigation authorized by the Board, and are requested by the Board. CONTRACTOR further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. CONTRACTOR agrees to require that all Subcontractors employed by CONTRACTOR for services performed for this Contract shall agree to comply with the provisions

of this Section. The CONTRACTOR and its Subcontractors shall not be compensated under this Contract for its time or any costs incurred in complying with this Section.

25.9 Reporting of Unfair Business Practices

CONTRACTOR agrees to comply with the Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and the New Mexico Unfair Practices Act, Section 57-12-1 et seq. NMSA 1978 (the "Act"). If during the term of this Agreement CONTRACTOR has been found to engage in any Unfair Business Practices, CONTRACTOR agrees to report that finding to the Water Authority Central Purchasing Office. Unfair Business Practices are defined as a system or pattern of acts or practices that a federal or State enforcement agency has made a formal finding within the last three (3) years to be discriminatory, deceptive, fraudulent, or abusive (or similar terms) under the Act, or an applicable federal or State consumer protection law relating to the Scope of this Agreement or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgment, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

25.10. Construction and Severability

If any part of this Contract is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Contract so long as the remainder of the Contract is reasonably capable of completion.

25.11. Enforcement

CONTRACTOR agrees to pay to OWNER all costs and expenses including reasonable attorney's fees incurred by OWNER in exercising any of its rights or remedies in connection with the enforcement of these Terms and Conditions or the Contract Documents.