

CONDITIONS OF CONTRACT

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SECTION 1

Definitions and Terms

These Conditions of Contract shall replace in its entirety the General Conditions of the New Mexico Standard Specifications for Public Works Construction, latest edition.

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

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
ACB	Asphalt Concrete Base
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
ANSI	American National Standards Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
Asph	Asphalt
ASTM	American Society for Testing and Materials
AWG	American Wire Gage (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 Curb Return or Back of Curb Radius
BM	Bench Mark
BWG	Birmingham Wire Gage (Iron and Steel Wire)
CB	Catch Basin
C.C. or C/C	Center to Center
Cem	Cement
CF	Curb Face
CI	Cast Iron
CIP	Cast-iron Pipe
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

DF	Douglas Fir
DG	Decomposed Granite
DMH	Drop Manhole
D/W	Driveway
EC	End of Curve
EL.or Elev	Elevation
Ex.or Exist	Existing
F & C	Frame and Cover
FH	Fire Hydrant
FL	Flow Line
F1.E1	Floor Elevation
FS	Federal Specification 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 Transportation Engineers
Lin	Linear
LL	Liquid Limit
Long	Longitudinal
Max	Maximum
MH	Manhole
M	Thousand
m	Meter or Middle
Min	Minutes or Minimum
Mon	Monolithic or Monument
MTD	Multiple Tile Duct
MUTCD	Manual on Uniform Traffic Control Devices, latest edition
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NMSA	New Mexico Statutes Annotated, 1978 Compilation
NMSHTD	New Mexico State Highway and Transportation Department
OC	On Center
OD	Outside Diameter
PC	Point of Curvature
PCC	Point of Compound Curve or Portland Cement Concrete
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
psf	Pounds per Square Foot
psi	Pounds per Square Inch
PT	Point of Tangency
Pvmt	Pavement
PVCP	Polyvinylchloride Pipe
Q	Rate of Flow

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
Spec	Specifications
Sp.MH	Special Manhole
San.S	Sanitary Sewer
St	Street
Sta	Station
Std	Standard
T	Tangent Distance
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
W.I	Wrought Iron

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.

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

Agreement - The executed written agreement which constitutes a contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement. (Form AF-10)

Application for Payment - The CONTRACTOR shall use industry standard forms, acceptable to OWNER, when requesting progress payments and include the schedule of values required by paragraph 14.1 as well as an affidavit of CONTRACTOR that progress payments received on account of the Work have been applied by CONTRACTOR to discharge in full all CONTRACTOR's obligations reflected in prior Applications for Payment.

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

Bid Bond - (See Proposal Guarantee)

Bid Proposal - (See Proposal)

Bidder - Any person, firm, or corporation submitting a Bid for the Work.

Board - The Governing Body of the OWNER or Contracting Agency.

Bonds - Bid, performance, and labor, material and tax payment bonds and other instruments of security, furnished by CONTRACTOR and his Surety in accordance with the Contract Documents. (Forms AF-6, AF-11, and AF-12)

Building Code - Reference to Building Codes or City ordinances shall mean the Uniform Building Code or the Farmington City Code, as most recently adopted, revised or modified, including the sidewalk and driveway ordinance. As outlined in the abbreviations the UBC, UMC, UPC, NEC and UFC are the minimum standards that any building or structure will be built to.

Calendar Day - A calendar day of twenty-four (24) hours measured from midnight to the next midnight.

Change Order - A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement. (Form AF-15)

City - The city of Farmington, New Mexico; same as OWNER.

City of Farmington Technical Specifications and Construction Standards - latest revision, available for a nominal fee through the City Public Works Department, 2nd Floor, 805 Municipal Drive, Farmington, NM 87401.

Conditions of Contract - Conditions which apply to all projects and which can be modified by Special Conditions.

Contract - (Same as Agreement) - The entire agreement between CONTRACTOR and OWNER, including the Advertisement for Bids, Instructions to Bidders, Bid Proposal, Proposal Guarantee, Agreement, Performance Bond, Labor, Material and Tax Payment Bond, Notice of Award, Notice to Proceed, Conditions of Contract, Special Conditions, Drawings, Specifications and all Addenda, as prepared by the City of Farmington, all of which are made a part of the Agreement.

Contract Documents - Including but not limited to the following documents which form the Contract:

- A. Invitation to Bid (Form AF-1(a))
- B. Contractor's Checklist (Form AF-1(b))
- C. Advertisement for Bids (Form AF-2)
- D. Bid Proposal (Form AF-3)
- E. Bidder's Estimate of Taxes (Form AF-4)
- F. Contractor's List of Subcontractors (Form AF-5)
- G. Bid Bond (Form AF-6)
- H. Statement of Bidder's Qualifications (Form AF-8)
- I. Notice of Award (Form AF-9)
- J. Agreement (Form AF-10)
- K. Performance Bond (Form AF-11)
- L. Labor, Material and Tax Payment Bond (Form AF-12)
- M. Certificate of Insurance (Acord Form 25)
- N. Notice to Proceed (Form AF-14)
- O. Change Order (Form AF-15)
- P. Certificate of Substantial Completion (Form AF-16)
- Q. Release and Waiver of Liens (Form AF-18)
- R. Subcontractor's Release and Waiver of Liens (Form AF-19)
- S. Contractor's Statement Concerning Claims (Form AF-20)

- T. Waiver for Partial Payments (Form AF-21)
- U. Drug Free Workplace Certification (Form AF-25)
- V. Contractor Safety Certification (Form AF-26)
- W. Minimum Wage Rates
- X. Special Conditions
- Y. Technical Specifications
 - a. Drawing(s)
 - b. Addenda
 - c. Purchase Order

Contract Price - The total monies payable to CONTRACTOR under the Contract Documents, or the price established for each of the payment items listed in the Bid Proposal (Form AF-3), as the context indicates.

Contract Time - The number of days stated in the Invitation to Bid (Form AF-1(a)) for the completion of the Work, computed as provided in paragraph 17.2.

Contracting Agency - (See OWNER)

Contractor - The person, firm, or corporation with whom OWNER has executed the Agreement.

Day - (See Calendar Day)

Designated Representative - Authorized representative designated by the Engineer to authorize or approve Work (i.e. OWNER's employee or outside consultant).

Drawings or Plans - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the OWNER and are referred to in the Contract Documents.

Dispute - Lack of agreement between any parties that have any obligations, duties or responsibilities under the terms of the Contract.

Engineer - The OWNER's employee responsible for the engineering design and construction inspection and supervision, acting directly or through duly authorized representatives.

Extra Work - Such additional labor, materials, equipment, and other incidentals, as are required to complete the Contract for the purpose for which it was intended but was not shown on the Drawings or called for in the Specifications or is authorized by the OWNER in addition to that Work called for in the Drawings and Specifications.

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

Force Majeure - An act of God, earthquake, flood, cyclone or other cataclysmic phenomenon of nature. A rain, windstorm, high water or other natural phenomenon of unusual intensity for the locality where the Work is to be performed, but which might reasonably have been anticipated from historical records of the general locality shall not be construed as an act of God. Additionally, the act of the public enemy, fire, explosion, perils of the sea, war, riot, sabotage, acts of governmental authorities, embargo, or any other circumstances of like or different character beyond the reasonable control of the CONTRACTOR, or by interruption or delay in transportation, labor trouble of a supplier from whatever cause arising and whether or not the demands of the employees involved are reasonable and within the affected party's power to concede or compliance with any order or request of any governmental officer, department, agency or committee shall further be considered as a force majeure. Provided; however, that any failure which CONTRACTOR intends to rely upon as an excuse for failure to perform or failure to perform in a timely manner, shall only be considered by OWNER if CONTRACTOR has given OWNER written notice of intention to rely upon such act within ten (10) days after the occurrence giving rise to the delay. Upon the occasion of such event,

the parties shall meet and confer and any additional time necessary shall be fixed by the OWNER, which determination shall be final.

General Conditions - A term having the same meaning as the term Conditions of Contract.

General Provisions - A term having the same meaning as the term Conditions of Contract.

Holiday or Legal Holiday - Any Calendar Day observed or authorized by the Contracting Agency as a non-working holiday.

Inspector - The Engineer's authorized representative assigned to make detailed inspections of Contract performance.

Laboratory - An independent materials testing laboratory operated as a commercial testing laboratory under the direct supervision of a licensed professional engineer in the State of New Mexico.

Liens - The term liens shall include material liens, mechanic liens, liens of taxing authority, security interests, encumbrances, and all claims including those made pursuant to the "Little Miller Act" (Section NMSA 13-4-18 through 13-4-20).

Modification - (a) A written amendment to the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by Engineer, or (d) a written order for a minor change or alteration in the Work issued by Engineer pursuant to paragraph 10.2. A modification may only be issued after execution of the Agreement.

New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction. Reference to NMSHTD, Standard Specifications shall be construed to mean New Mexico Standard Specifications for Highway and Bridge Construction, latest edition thereof.

Notice of Award - The written notice by OWNER to the apparent successful Bidder stating that, upon compliance with the conditions precedent to be fulfilled by him within the time specified, OWNER will execute and deliver the Agreement to him. (Form AF-9)

Notice to Proceed - A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents. (Form AF-14)

Owner - For the purpose of this contract, the OWNER shall be the City of Farmington.

Payment Item - The estimated quantities of items listed in the Bid Proposal (Form AF-3) of these specifications for which the CONTRACTOR will be paid at the unit bid prices.

Person - Any individual, firm, association, partnership, corporation, trust, or joint venture.

Project - The entire construction to be performed as provided in the Contract Document.

Proposal - The offer of a Bidder, on the prescribed form, to perform the Work and to furnish the labor and materials at the prices quoted. (Form AF-3)

Proposal Guarantee - Cash, certified check, cashier's check, money order, or Bidders' Surety Bond executed by a bona fide Surety Company, which is authorized to transact business in the State of New Mexico accompanying the proposal as a guarantee that the Bidder, if awarded the contract, will enter into the Contract with the OWNER for the performance of the Work. (Form AF-6)

Reference Specifications, Test Methods, and Applicable Codes - All standard specifications and test methods of any society, association, or organization referred to in these Contract Documents are made a

part of the same as if written in full. (Any reference to a paragraph or subparagraph within a section shall include all general provisions of the section to which reference is made). Reference to such standards refer to the latest published issues as of the date of the Invitation to Bid. Reference to local or state codes and laws shall mean the latest adopted and published codes as of the date of the Invitation to Bid.

Resident Project Representative The authorized representative of OWNER who is assigned to the Project site or any part thereof.

Roadway - That portion of the right-of-way or easement intended for use by vehicle traffic.

Rock Excavation - The use of high explosives, pneumatic or hydraulic equipment in trenching operations as determined by the Engineer.

Service Connection - All or any portion of the pipe, conduit, cable, or duct which connects a utility main or distribution line to a meter box or property line of an individual user.

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

Special Conditions - Conditions which are written for a specific Project and which modify any section or paragraph of the Condition of Contract.

Specifications, also Technical 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.

State - The State of New Mexico.

Street - Any road, highway, parkway, freeway, alley, walk, or way including all area within the right-of-way.

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

Substantial Completion - The date as certified by OWNER when the construction of the Project or a specified part thereof is sufficiently completed, all punch list items 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 be no such certification, the date when final payment is due in accordance with paragraph 14.12. (Form AF-16)

Supplementary Specifications - Specifications which are written to modify any section or paragraph of the Technical Specifications of this document.

Surety - The bondsman, party or parties who may guarantee the fulfillment of the Contract by Bond.

Units of Measurement - Measurements shall be in accordance with U.S. Standard Measures. A pound shall be avoirdupois. A ton shall be 2,000 pounds. The unit of liquid measure shall be the U.S. gallon.

Utility - 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.

- A. Public Utility - Owned and operated by a municipality or another political subdivision of the State.
- B. Private 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.

Worksite - The specific location of the Project.

SECTION 2 - Preliminary Matters

2.1. Execution of Agreement - The Agreement and such other required Contract Documents will be signed by the CONTRACTOR and returned to the OWNER within ten (10) days after the Notice of Award has been received by the CONTRACTOR. If the Contract is not executed by the OWNER within thirty (30) days following receipt from the CONTRACTOR of the signed Agreement and other required Contract Documents, the CONTRACTOR shall have the right to withdraw the Proposal without penalty. No Contract shall be effective until it has been fully executed by all of the parties thereto.

2.2. Delivery of Bonds - When CONTRACTOR delivers the executed Agreement to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as he may be required to furnish in accordance with paragraph 5.1.

2.3. Copies of Documents - OWNER shall furnish to CONTRACTOR one fully executed copy of the Contract Documents unless otherwise provided in the Special Conditions. Additional copies will be furnished upon request.

2.4. CONTRACTOR's Pre-Start Representations - CONTRACTOR represents that he has familiarized himself with and assumes full responsibility for having familiarized himself 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 he has correlated his study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that he has studied all surveys and investigation reports of subsurface latent physical conditions referred to in the Specifications 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 he has correlated the results of all such data with the requirements of the Contract Documents.

2.5. Commencement of Contract Time; Notice to Proceed - The Contract Time will commence to run on the day indicated in the Notice to Proceed.

2.6. Starting the Project - CONTRACTOR shall start to perform his obligations under the Contract Documents within ten (10) days of the date when the Contract Time commences to run. No Work shall be done at the Worksite prior to the date on which the Contract Time commences to run unless authorized by the Engineer.

2.7. Before Starting Construction - 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 immediately report in writing to OWNER any conflict, error or discrepancy which he may discover; however, he shall not be liable to OWNER for his failure to discover any conflict, error, or discrepancy in the Drawings or Specifications.

2.7.1. Within ten (10) days after delivery of the executed Agreement by OWNER to CONTRACTOR, CONTRACTOR shall submit to OWNER for approval an estimated progress schedule indicating the starting and completion dates of the various stages of the Work and a preliminary schedule of Shop Drawing Submissions.

2.7.2. Within twenty (20) days after delivery of the executed Agreement by OWNER to CONTRACTOR, but before starting the Work at the Worksite, a conference will be held to review the above schedules, to establish procedures for handling Shop Drawings and other submissions and 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 his representative, Resident Project Representative, CONTRACTOR and his Superintendent.

2.7.3. The award of Contract, if it be awarded, will be made to the lowest responsible and qualified Bidder whose Proposal complies with all the requirements prescribed, for the Work at all locations shown on the plans and called for on the Bid Proposal.

SECTION 3 - CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS

3.1. It is the intent of the Specifications and Drawings 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 OWNER's attention in writing at once and before proceeding with the Work affected thereby; however, he shall not be liable to OWNER for his failure to discover any conflict, error, or discrepancy in the Specifications or Drawings. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Agreement, Modifications, Addenda, Special Conditions, Instructions to Bidders, General Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials, or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

3.3. It shall be the CONTRACTOR's responsibility to advise the OWNER no later than ninety-six (96) hours prior to the Bid opening date of conflicting requirements, or missing information which requires clarification of the Specifications.

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, rights-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 - 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. OWNER does not warrant that these surveys, tests and reports are in any way indicative of the actual conditions existing on the Worksite.

4.3. Unforeseen Physical Conditions - CONTRACTOR shall promptly notify OWNER in writing of any subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract Documents. Promptly thereafter OWNER shall obtain the necessary additional surveys and tests and furnish copies to CONTRACTOR. If OWNER 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. Reference Points - The OWNER will provide construction staking and surveying from base lines, grades, and bench marks shown on the plans or established by the OWNER. Any discrepancies in design or base lines and grades revealed in construction operations shall be brought to the OWNER's attention immediately for correction or clarification. If the CONTRACTOR elects to proceed with construction before such corrections or clarifications are made, he shall do so at his own risk and expense, pending approval by the OWNER. Restaking or resetting of horizontal and vertical control points due to CONTRACTOR's negligence in preserving stakes or horizontal or vertical control points shall be at the CONTRACTOR's expense. The CONTRACTOR shall arrange his requests for staking so that, insofar as possible, the OWNER will be able to stake out in advance to avoid having the survey crew waiting "on call" for minor staking. At least 48 hours' notice shall be given the OWNER for commencement of staking, with sufficient time allowed for completion of staking requirements prior to commencement of the particular construction work.

The CONTRACTOR shall not move or disturb any monuments or other survey markers until the OWNER has referenced them and has given permission to move them. CONTRACTOR shall report to the OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed, or moved.

SECTION 5 - BONDS AND INSURANCE

5.1. Bonds - CONTRACTOR shall furnish a performance and a labor, material and tax payment bond upon the forms specified in the Contract Documents as security for the faithful performance and payment of all obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price and (except as may be otherwise provided in the Special Conditions, or by proper modification) with such sureties as are licensed to conduct business in the state where the Project is located and are named in the current list of Department of the Treasury's Listing of Approved Sureties (Department Circular 570), latest revision, as published by the U.S. Treasury Department, Financial Management Service. The performance bond shall remain in effect through the Guarantee Period. (See paragraph 13.10) The Surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to the CONTRACTOR of amounts for materials under the provisions of paragraph 14.1.1 of these Conditions of Contract and acknowledges, in accordance with paragraphs 14.9 and 14.14 of said Conditions of Contract, that such payment, whether or not in strict compliance with these provisions shall not preclude or stop the OWNER from showing the true character and quantity of the materials furnished or from recovering from the CONTRACTOR or his sureties such damages as the OWNER may sustain by reason of deficiency in quantity or quality of the materials with respect to which a progress payment was made.

If the Surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located is revoked, CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to OWNER.

5.2. CONTRACTOR's Commercial General Liability Insurance - CONTRACTOR shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, disease, or death of any person including claims insured by personal injury liability coverage, and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from CONTRACTOR's operations under the Contract Documents, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the types and specific coverages herein described and be written for not less than any limits of liability specified in these Contract Documents or required by law, whichever is greater. Insurance must include coverage for collapse (C), explosion (X), and underground (U) property damage; independent contractors, products/completed operations, contractual liability, broad form property damage, personal injury and assault and battery.

5.2.1 CONTRACTOR's Builder's Risk: CONTRACTOR shall purchase and maintain all risk insurance (Builder's Risk) upon the entire WORK at the site as well as upon materials and equipment in temporary storage both on and off the site with coverage limits equal to the CONTRACT PRICE.

5.3. Contractor's Automobile Liability Insurance - CONTRACTOR shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, disease or death of any person; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from the use of all owned, non-owned, or hired, vehicles, both on and off Work, arising from or in any way related to or as the result of CONTRACTOR's operations under the Contract Documents, whether such operations be by the CONTRACTOR or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable.

5.4. CONTRACTOR's Workers' Compensation and Employers Liability Coverage

5.4.1. The CONTRACTOR shall comply with the provisions of the Workers' Compensation Act, the subsequent Injury Act, and CONTRACTOR shall procure and maintain during the life of this Contract Workers' Compensation and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978 for safety devices. If the CONTRACTOR elects to be self-insured, he shall comply with the applicable requirements of law. If any portion of the Work is to be sub-let, the CONTRACTOR shall require the Subcontractor similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such Work. The OWNER, its officers, or employees will not be responsible for any claims or actions occasioned by the failure of the CONTRACTOR to comply with the provisions of this paragraph.

5.4.2. In case any class of employee is not protected under the Workers' Compensation Statute, the CONTRACTOR shall provide and shall cause each Subcontractor to provide adequate employer's liability coverage as will protect him and the OWNER against any claims resulting from injuries to and death of workers engaged in Work under this contract.

5.5. Coverage Limits - Insurance coverage limits required to be carried by the CONTRACTOR under this Section shall be as follows:

5.5.1. CONTRACTOR's Commercial General Liability Insurance and CONTRACTOR's Commercial Automobile Liability Insurance limits of coverage shall be the limits established by the New Mexico Tort Claims Act or:

5.5.1.1. Combined Single Limit coverage of \$1,000,000

5.5.2. CONTRACTOR's Workers Compensation coverage shall be those established by applicable statutes. Employer's liability coverages shall be the limits established by the New Mexico Tort Claims Act or \$1,000,000.

5.5.3. OWNER's protective liability insurance limits shall be the same as specified in subsection 5.5.1. for CONTRACTOR's Commercial General Liability Insurance.

5.6. Certificates of Insurance - CONTRACTOR shall include as part of the Contract Documents certificates of insurance on forms acceptable to the OWNER. The Certificates of Insurance shall evidence that all coverages, limits, and endorsements required herein are in full force and effect. Such Certificates of Insurance shall also reference this Agreement/Contract number. With respect to any insurance policy referenced on a Certificate of Insurance, CONTRACTOR will (or he will cause the respective insurance carrier to) provide the OWNER with a minimum thirty (30) calendar days written notice in the event of cancellation, termination, non-renewal, or any other material change. Any such notice shall also include copies of the non-renewal or cancellation notice originated by the insurance carrier. Written notice may be submitted via fax, courier, or postal service, in accordance with the notice provision herein.

5.7. Owner's Protective Liability Insurance - The CONTRACTOR shall procure and maintain during the life of the contract an Owner's protective liability insurance policy. The policy will be written with the OWNER as the named insured and will provide coverage for the OWNER's officers 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. The policy shall provide the minimum limits as specified in the Contract Documents (except as may be otherwise specified in the Special Conditions or by proper Change Order).

5.8. 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, the premiums shall be paid by CONTRACTOR; if subsequent thereto, they shall be paid by OWNER (except as otherwise provided in paragraph 6.7).

5.9. OWNER Named as Additional Insured, Cross Liability Provisions, and Waiver of Subrogation - The OWNER shall be named as an additional insured on all policies and all policies shall include cross liability provisions. Workers' Compensation and Commercial General Liability Insurance coverage shall include a waiver of subrogation in favor of the OWNER.

5.10. In General - It is the intent of the specifications of insurance requirements above that the CONTRACTOR shall maintain in force the broadest commonly available coverage against the risks and perils listed above, in the Special Conditions, or in Instructions pursuant to Paragraph 5.8 above. If insurance against the listed risks and perils is commonly available, the failure to specify such insurance shall not relieve CONTRACTOR from its duty to maintain such insurance. Review of CONTRACTOR's insurance by the OWNER shall not relieve or increase the liability of CONTRACTOR. Also, the specification of any insurance in the Contract Documents does not limit any of the other obligations of CONTRACTOR under those documents. In each insurance policy, CONTRACTOR shall provide either in printed text or by endorsement that it shall be primary with respect to the interest of the OWNER, and any insurance maintained by the OWNER is in excess and not contributory to CONTRACTOR's insurance policies regardless of any like insurance coverages that the OWNER may have. Nothing in this Agreement/Contract shall be deemed to limit CONTRACTOR's liability under this Agreement/Contract to the limits of the insurance coverages required hereunder. CONTRACTOR shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

SECTION 6 - CONTRACTOR'S RESPONSIBILITIES

6.1. Supervision and Superintendence - CONTRACTOR shall supervise and direct the Work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction; but he 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.

6.2. CONTRACTOR shall keep on the Worksite at all times during its progress a competent resident superintendent, who shall be on twenty-four (24) hour call until completion of the Work, and shall not be replaced without written notice to OWNER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Worksite and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

6.2.1. The CONTRACTOR shall provide to the OWNER the name and telephone number of the resident superintendent and a telephone number at which the superintendent can be contacted twenty-four (24) hours a day until completion of the Work, and a list of key personnel and telephone numbers for use in case of emergencies.

6.3. Labor, Materials, and Equipment - CONTRACTOR shall provide competent, suitably qualified personnel to lay out the Work and perform construction as required by the Contract Document. He shall at all times maintain good discipline and order at the Worksite.

6.4. CONTRACTOR shall furnish 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.

Necessary sanitary conveniences for the use of the laborers on the Project, properly secluded from public observation, shall be provided and maintained in sanitary condition by the CONTRACTOR and their use shall be directly enforced.

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

6.5.1 Where applicable, materials used in this project shall comply with the Public Works Contracts, Sections 13-4-5 through 13-4-9, Use of New Mexico Materials.

6.6. 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.

6.7. Substitute Materials or Equipment - If the Specifications, laws, ordinances or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute that is equal to any material or equipment specified, and if CONTRACTOR wishes to furnish or use a proposed substitute, he shall, prior to the conference called for by paragraph 2.7.2, make written application to OWNER 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 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. No substitute shall be ordered or installed without the written approval of OWNER who will be the judge of equality and may require CONTRACTOR to furnish such other data about the proposed substitute as he 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.

6.8. Concerning Subcontractors - 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. A Subcontractor or other person or organization identified in writing to OWNER by CONTRACTOR prior to 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. 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 be increased or 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.

6.9. CONTRACTOR shall be fully responsible for all acts and omissions of his 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 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 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 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.

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

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

6.12. 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, 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 indemnify and hold harmless OWNER or 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 resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents and shall defend all such claims in connection with any alleged infringement of such rights.

6.13. Permits and Licenses - 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, which are applicable at the time of his Bid. CONTRACTOR shall also pay all public utility charges.
6.13.1. The CONTRACTOR shall, upon request by the OWNER, be prepared to present evidence of current State of New Mexico Contractor's License and a City of Farmington, New Mexico occupation license or business registration.

6.14. Laws and Regulations - CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he shall give OWNER 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 OWNER, he shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules, and regulations.

6.15. Taxes - CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by him in accordance with the laws.

Pursuant to Section 13-1-108 NMSA 1978, the total amount Bid shall exclude all applicable taxes including applicable state gross receipts tax or applicable local option tax. The OWNER will reimburse CONTRACTOR for any taxes due on the Contract including any increase in applicable taxes which become effective after the date the Contract is entered into. Taxes shall be shown as a separate amount on each billing or request for payment and shall separately identify each tax being billed.

To assist the OWNER with budget preparation, the Bidder shall complete the Bidder's Estimate of Taxes (Form AF-4) and shall identify by name each tax Bidder believes to be applicable to this Contract and shall estimate the amount of each tax which will be charged on the entire contract.

If applicable, OWNER may elect to perform a cost segregation study for New Mexico gross receipts tax deduction purposes relative to gross receipts taxes paid on a facility construction project under this Contract. Cost segregation in general, is the process of identifying and classifying building property components as tangible personal property due to the ability to depreciate said components over a shorter life span when the identified assets are able to meet criteria established under federal case law and treasury regulations. A cost segregation analysis seeks a deduction for gross receipts taxes paid on the sale of certain assets identified through the study as tangible personal property. OWNER will notify CONTRACTOR if it has decided to perform a cost segregation analysis on this facility construction project and CONTRACTOR agrees to cooperate in providing the necessary information required for the cost segregation study. OWNER may hire a third party provider (hereafter "Provider") to perform this analysis (in whole or in part) on OWNER's behalf and CONTRACTOR agrees to cooperate with such Provider (to be named at an appropriate time).

6.16. Use of Premises - CONTRACTOR shall confine his equipment, the storage of materials and equipment, and the operations of his workmen 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.

The CONTRACTOR shall not trespass upon public or private property without permission to do so and shall, at all times, take proper precautions to protect public and private property from damage. Means of ingress and egress shall be provided for all persons living and 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.

6.16.1. The CONTRACTOR shall never unnecessarily interfere with or interrupt the services of any public utility having property within or adjacent to the streets, alleys and easement involved in the Work and shall take all necessary precaution and effort to locate and protect all underground conduit, cables, pipes, water mains, sewers, structures, gas lines, trees, monuments, power lines, telephone and telegraph lines, traffic control devices and other structures, both below and above ground. He shall give all Public Utility Companies a reasonable notice in writing, in no event less than forty-eight (48) hours, for any Work that he contemplates which would interfere in any way whatsoever with the service of any existing public utility and OWNER owned facilities. If such public utility does not cooperate for the protection of its service, the CONTRACTOR shall promptly notify the OWNER's Inspector. Utility lines shall be located by the 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 the OWNER 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. The CONTRACTOR shall immediately report any damages to property to the company or owner involved and to the OWNER.

6.16.2. Underground Structures - It shall be the responsibility of the CONTRACTOR to locate each and every utility in advance of construction to preclude damage to these lines. The appropriate utility company shall be notified a minimum of forty-eight (48) hours in advance of the construction, and any damage resulting from construction shall be the responsibility of the CONTRACTOR.

Any interference with, or damage to, either underground or above ground utilities of any nature shall be the CONTRACTOR's legal and financial responsibility, saving the OWNER harmless from any or all claim resulting from damage to these utilities by reason of his operations incidental to the Work.

Notification shall be made through use of the "New Mexico One Call" by calling (telephone number 1-800-321-2537) or by direct call to appropriate utility company.

COLOR CODING FOR THE BLUE STAKE PROGRAM

White.....	City of Farmington Traffic
Red.....	City of Farmington Electrical
Green.....	City of Farmington Sewer

Blue.....	City of Farmington Water
Orange...	Telephone Co. & Cable Television
Yellow....	Gas Company of New Mexico

In the event that a utility is disclosed during excavation that requires additional Work on the part of the CONTRACTOR for its maintenance, relocation or support, the following procedures will apply:

6.16.2.1. When a utility is found to occupy the space to be occupied by a part of the permanent Works to be constructed, or when the utility is, in the opinion of the Inspector, in such close proximity to the new Work as to require the relocation or alteration of this utility, the OWNER will arrange for such relocation or alteration.

6.16.2.2. With the exception of Service Connections, when a utility lies within the excavation, but does not intercept the permanent Work to be constructed, the CONTRACTOR shall maintain the line in place. All costs for such work shall be borne by the CONTRACTOR.

6.16.3. Traffic Control and Work in the Right-of-Way

6.16.3.1. The CONTRACTOR shall conduct his operation to cause the minimum inconvenience to traffic and shall provide, and continually maintain (except during the time of paving), a smooth and drained street over which vehicular traffic can move safely and under its own power, regardless of weather conditions. These provisions apply to continuous use by traffic both day and night.

At the pre-construction conference, the CONTRACTOR shall designate one of his employees, other than the Superintendent, to be responsible for traffic control. This responsibility shall include the CONTRACTOR's signing and all other details covered by the Specifications which contribute to the comfort and safety of the traveling public.

Work in the travelway must meet the requirements set forth in the MUTCD.

After backfilling of the trench and prior to repaving of the streets, it shall be the responsibility of the CONTRACTOR to maintain relatively smooth access to driveways.

The CONTRACTOR shall construct and maintain temporary crossings, complete with flagmen, whenever necessary to expedite the Work or to maintain traffic. Temporary crossings shall be of ample size to carry safely the loads which will use them. The cost of labor, materials, tools, and equipment for traffic control shall be the responsibility of the CONTRACTOR, and no separate or additional payment will be made, unless otherwise specified.

6.16.3.2. Maintenance of Right-of-Way During Construction: The CONTRACTOR shall keep all travel lanes, ditches, gutters, medians and drop inlets clean of debris and maintained during construction until final acceptance.

The CONTRACTOR shall provide, when required, a safe substitute route (detour) for any public right-of-way obstructed or occupied by his operations and shall erect and maintain all necessary barricades, warning, signs, detour signs, route signs, route markers, according to plans approved by the Engineer and as specified herein. He shall take all necessary precautions for the protection of the Work and the safety of his employees and of the public.

The CONTRACTOR shall provide suitable means, by sprinkling or otherwise, for the abatement of dust conditions in the construction area and on access and detour roads.

Whenever a street or thoroughfare is to be closed or to be partially closed, the CONTRACTOR shall notify the Engineer or his Designated Representative, phone number (505) 599-8201 of such closing and the length of time the street will be closed to traffic. This notice shall be given three (3) business days prior to closing, and at that time, a detour plan shall be submitted for approval to the Engineer. In order that the traveling public and business establishments along the streets be inconvenienced as little as possible, the

CONTRACTOR shall restore the street surface as quickly as possible. The CONTRACTOR shall notify the Engineer prior to the opening of any street after a street has been closed for any length of time.

If CONTRACTOR fails to comply with orders of the Engineer regarding repaving, the Engineer may require the CONTRACTOR to cease progress on any or all parts of the Work under Contract until the unsatisfactory condition is corrected. The Engineer may order such repaving work to be performed by others, and the costs of this repaving may be deducted from payments due the CONTRACTOR. No additional compensation will be allowed as a result of such suspension.

The CONTRACTOR shall contact the Engineer in writing or in person forty-eight (48) hours prior to the beginning of construction work on any public street, alley or easement, which in any manner will interfere with traffic. Together, they shall establish an orderly sequence of construction operations which will minimize interference with traffic.

Excavated material shall be placed along the line of Work in a manner to cause as little inconvenience as possible to public travel and access to abutting property.

6.16.3.3. Barricades and Warning Signs: The CONTRACTOR shall at his expense and without further order other than the awarding of the contract, provide, erect and maintain at all times during the process of the Work or during a temporary suspension of Work, barricades, warning signs and other approved protection.

Warning Signs shall be placed in accordance with the latest edition of part VI of the MUTCD. The furnishing, installing and maintaining of traffic control devices, the furnishing and equipping of flagmen shall be considered incidental to the completed Work and no payment will be made therefore. Failure to comply with barricading requirement: After more than two warnings, should the CONTRACTOR fail to install and maintain the necessary barricading the OWNER will install and maintain the required barricading. Fee for this work will be charged against the Project and deducted from the next Application for Payment. The fee will be determined by the prevailing barricade rental and maintenance rates.

6.16.3.4. Project Sign: Each Worksite shall display a weatherproof sign which shall be carefully maintained during the life of the contract. Signs shall not be smaller than 2' x 4' except to meet special requirements and will be placed at the end of the Project. The signs will state the contractor's name, Work being done for the OWNER and applicable Contract number. No other information shall be included on Project signs. All costs for such work shall be borne by the Contractor. Each project sign shall be removed from the work-site and disposed of properly, by the Contractor, no later than thirty (30) calendar days following the substantial completion date, or prior to final payment, whichever occurs first.

6.17. The CONTRACTOR shall restore at his own expense any public, City owned, or private property damage for which he is directly or indirectly responsible to a condition equal to that existing before damage. If he fails to do so, or refuses to do upon notice, the OWNER may cause such restoration and deduct cost from monies due, or which may become due the CONTRACTOR.

6.17.1. CONTRACTOR shall confine his equipment, the storage of materials and equipment, and the operations of his workmen 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.

6.17.2. 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.

6.18. Record Drawings - CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the Worksite in good order and annotated to show all changes made during the construction process. These shall be provided to OWNER and shall be delivered to him upon completion of the Project and prior to final payment.

6.19. Safety and Protection -The safety provisions of applicable federal, state and municipal laws, ordinances, and regulations, building and construction codes shall be observed and adhered to. Machinery, equipment and other physical hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, and Federal Regulations (OSHA), to the extent that such provisions are not incompatible with existing applicable laws and regulations. Every precaution shall be exercised at all times by the CONTRACTOR and his Subcontractors for the protection and safety of employees, OWNER personnel, and other persons including children on or near the Project. CONTRACTOR shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to:

6.19.1. all employees on the Worksite and other persons who may be affected thereby;

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

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

The CONTRACTOR shall conduct his 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 for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for its safety and protection. All damage, injury, or loss to any property referred to in subparagraph 6.19.2 or 6.19.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, and 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 drawings or Specifications or to the acts or omissions of OWNER 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 safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.12 that Work is acceptable.

Additional and more specific requirements may be made in the specifications which form a part of this contract; however, such requirements shall always be in addition to, and not in lieu of, the provisions of this section. The CONTRACTOR shall conduct his construction operations and control the storage of equipment and materials on the job in such a manner as to prevent the maintaining of an attractive nuisance which may encourage children to play in and about the Work area. The precautions shall be taken on no further order from the OWNER other than the execution of these Contract Documents by the CONTRACTOR.

6.20. CONTRACTOR shall designate a responsible member of his organization at the Worksite whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent, unless otherwise designated in writing by CONTRACTOR to OWNER.

6.21. Emergencies - In emergencies affecting the safety of persons or the Work or property at the Worksite or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER, is obligated to act at his discretion to prevent threatened damage, injury, or loss. He shall give OWNER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby; and a Change Order shall thereupon be issued covering the changes and deviations involved. If CONTRACTOR believes that additional work done by him in an emergency which arose from

causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefor as provided in Section 11 and 12.

6.22. Shop Drawings and Samples - After checking and verifying all field measurements, CONTRACTOR shall submit to OWNER for approval, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.7.1), five copies (or, at OWNER's option, one reproducible copy) of all Shop Drawings which shall have been checked by and stamped with the approval of CONTRACTOR and identified as OWNER may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and the like to enable Engineer to review the information as required.

6.23. CONTRACTOR shall also submit to OWNER for 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, and pertinent catalog numbers and the use for which intended.

6.24. At the time of each submission, CONTRACTOR shall in writing call Engineer's attention to any deviations that the Shop Drawings or sample may have from the requirements of the Contract Documents.

6.25. The OWNER will review and approve with reasonable promptness Shop Drawings and samples, but his 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. The 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 OWNER and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by OWNER on previous submissions. CONTRACTOR's stamp of approval on any Shop Drawing or sample shall constitute a representation to owner that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or he assumes full responsibility for doing so and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

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

6.27. OWNER's approval of Shop Drawings or samples shall not relieve CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless CONTRACTOR has in writing called OWNER's attention to such deviation at the time of submission and OWNER has given written approval to the specific deviation, nor shall any approval by OWNER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

6.28. Cleaning - Throughout the period of construction, the CONTRACTOR shall keep the Worksite free and clean from all rubbish and debris. The CONTRACTOR shall promptly clean up all or any portion of the Worksite when notified to do so by the OWNER. Adjacent streets and highways shall be kept free of dirt and litter from CONTRACTOR's handling operations. The CONTRACTOR shall take reasonable precautions to protect private property adjacent to the Project from such nuisances as dust and dirt, rock and excessive noise. Care shall be taken to prevent spillage on streets over which hauling is done, and any such spillage or debris deposited on streets due to the CONTRACTOR's operations shall immediately be cleaned up. The CONTRACTOR shall promptly remove from any parts of the working area all unused materials, surplus earth, and debris, to the end that construction areas are returned to a clean, neat, and acceptable condition at the earliest time following completion of the Work.

In the event that the CONTRACTOR fails to comply with orders of the OWNER regarding cleanup, the OWNER may require the CONTRACTOR to cease progress on any or all parts of the Work under Contract

until the unsatisfactory condition is corrected. The OWNER may order such cleanup work performed by others and the costs therefor deducted from payments due the CONTRACTOR. No additional compensation will be allowed as a result of such suspension.

Salvageable Material: All material deemed salvageable from existing OWNER facilities, which are to be abandoned shall remain the property of the OWNER. Salvageable materials shall be delivered to the Municipal Operation Center (MOC). The Engineer will determine the location for disposition of salvageable material. Material deemed not salvageable shall be the CONTRACTOR's property and shall be disposed of in accordance with Local, State and Federal Rules, Regulations and Laws.

6.28.1. During all phases of the construction Work, the Contractor shall take precautions to abate dust nuisance by cleaning up, sweeping, sprinkling with water, or other means as necessary to accomplish results satisfactory to the Engineer.

6.29. Indemnification - CONTRACTOR shall indemnify and hold harmless OWNER and its agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the Work by the CONTRACTOR, to the extent that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, except as limited by paragraph 6.31.

6.30. In any and all claims against OWNER or his agent or employees by and employees of CONTRACTOR, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.29 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

6.31. The obligations of CONTRACTOR under paragraph 6.29 shall not extend to the liability of OWNER, his agents, or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications by the OWNER or the agents or employees of the specifications by the OWNER or the agents or employees of the OWNER, or (b) the giving of or the failure to give directions or instructions by OWNER, his agents, or employees where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

6.32. Continuing the Work - CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and OWNER may otherwise agree in writing.

SECTION 7 - WORK BY OTHERS

7.1. OWNER may perform additional work related to the Project by himself, or he may let other related direct contracts which shall contain General Conditions similar to these. CONTRACTOR shall afford the other contractors who are parties to such direct contracts (or OWNER, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate CONTRACTOR'S work with theirs.

7.2. If any part of CONTRACTOR's Work depends for proper execution of results upon the work of any such other contractor (or OWNER), CONTRACTOR shall inspect and promptly report to OWNER in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure 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 his 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 other contractor's work with the written consent of OWNER 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 involves him an additional expense or entitles him to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Sections 11 and 12.

SECTION 8 - OWNER'S RESPONSIBILITIES

8.1. OWNER shall issue all communications to CONTRACTOR through the Engineer or other Designated Representative.

8.2. In case of termination of the employment of the Engineer, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former Engineer. Any Dispute in connection with such appointment shall be subject to arbitration.

8.3. OWNER shall furnish the data required of it under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.6.3 and 14.12.

8.4. OWNER's duties in respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of surveys and investigation reports of subsurface and latent physical conditions at the Worksite or otherwise affecting performance of the Work which have been relied upon by Engineer in preparing the Drawings and Specifications.

8.5. In addition to its rights to request changes in the work in accordance with Section 10, OWNER (especially in certain instances as provided in paragraph 10.4) shall be obligated to execute Change Orders.

8.6. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.2.

8.7. In connection with OWNER's right to stop work or suspend work, see paragraphs 13.8 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

SECTION 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.1. To prevent delays and Disputes, and to discourage litigation, the parties to this Contract agree that the Engineer or other Designated Representative shall determine the quantities of work which are to be paid for under the Contract, and shall determine all questions in relation to the work. If the Designated Representative is other than an engineer normally employed by OWNER, the Special Conditions or an Addendum will specify that person's duties relative to those specified for the Engineer under this Contract.

SECTION 10 - CHANGES IN WORK

10.1. Without invalidating the Agreement, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the work; 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. OWNER may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

If CONTRACTOR believes that any minor change or alteration authorized by OWNER entitles him to an increase in Contract Price, he may make a claim therefor as provided in Section 11.

10.3. Additional work performed by CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Paragraph 6.21 and except as provided in paragraphs 10.2 and 13.7.

10.4. OWNER shall execute appropriate Change Orders covering changes in the Work to be performed as provided in paragraph 4.3 and Work performed in an emergency as provided in paragraph 6.21 and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is approved by OWNER.

10.5. It is CONTRACTOR's responsibility to notify his Surety of any changes affecting the general scope of the work or change in the Contract Price, and the amount of the applicable Bonds shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to OWNER upon request.

SECTION 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER 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 OWNER allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by OWNER. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

Failure to comply with the time requirements in this Paragraph operates as an express waiver of any right to make a claim for adjustment in the Contract Price. Contractor's signature on a Change Order acts as an express waiver to seek any additional costs or time as a result of the work described in the Change Order.

11.3. 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, 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.

11.3.3. On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a Contractor's Fee for overhead and profit (determined as provided in paragraph 11.6. Whenever Extra Work

to be compensated on this basis is performed, the CONTRACTOR shall supply the OWNER with a list of the names of the personnel who performed the Extra Work, together with the hours on the job, and group classification of each such person.

11.4. Cost of the 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, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the work under schedules of job classifications agreed upon by 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 Worksite. The expenses of performing Work after regular working hours, on Sunday or legal Holidays shall be included in the above to the extent 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 manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the 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. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to OWNER who will then determine 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 in accordance with paragraphs 11.4 and 11.5. All subcontracts shall be subject to the other conditions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, traveling, and subsistence expense 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. The ownership value of all construction equipment and machinery for the time actually employed in the Work under this section.

11.4.5.4. Rentals of all construction equipment and machinery and the parts thereof when rented from other than the CONTRACTOR and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof shall be paid at the lesser of actual costs or those established in accordance with rental rates from the Rental Rate Blue Book (latest edition) as obtained from: Primedia Information Incorporated, 1735 Technology Drive, Suite 410, San Jose, CA 95110 or successor organization. The rental of any such equipment, machinery, parts shall cease when the use thereof is no longer necessary for the Work.

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

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

11.4.5.7. Losses, damages, and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of and to 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, he shall be paid for his services a fee proportionate to that stated in paragraph 11.6.

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

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

11.4.5.10. Increased cost of premiums for Bonds and insurance which OWNER is required to pay in accordance with paragraph 5.8.

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

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in paragraph 11.4.1 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

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

11.5.3. 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 as otherwise provided in paragraph 11.4.5.10).

11.5.4. 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.

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

11.5.6. The OWNER will not honor any request or demand for additional reimbursement based on escalated material costs.

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, a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.1.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be ten percent,

11.6.1.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be five percent; 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, and

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

11.7. The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

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

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

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.

SECTION 12 - CHANGE OF 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 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 OWNER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by OWNER. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if he makes a claim therefor as provided in paragraph 12.1. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by OWNER, fires, floods, labor disputes, epidemics, abnormal weather conditions, or Force Majeure.

12.3. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.4. Other than a change in the Contract Time, no compensation, adjustment or change in the Contract Price will be paid to the CONTRACTOR for any hindrance or delay, whether avoidable or unavoidable, foreseeable or unforeseeable.

SECTION 13 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.1. Warranty and Guarantee. CONTRACTOR warrants and guarantees to OWNER and Engineer that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects for a period of one (1) year following its completion and acceptance. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests, or approvals, shall be considered defective. Prompt notice of all defects 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.

13.2. Tests and Inspections.

The number, type and location of tests shall be determined by the Engineer. The costs of all tests, except as provided below, shall be paid for by the OWNER. The costs of the following shall be paid by the CONTRACTOR at no cost to the OWNER:

13.2.1. Retests due to failure to pass the initial test or due to the fault of CONTRACTOR.

13.2.2. Tests of all materials or manufactured items, not furnished by the OWNER, which will be incorporated into the work to insure compliance with the applicable specification. Testing and mix designs shall be made by a Laboratory. The CONTRACTOR shall furnish the OWNER four (4) copies of all test reports, including job-mix formula, of all material incorporated into the work and distribute them per the OWNER'S requirements. The Laboratory shall note the OWNER on all reports as "client". Design mix and materials test and certifications shall be included in the related pay items.

13.3. CONTRACTOR shall give OWNER 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 OWNER, it must, if requested by OWNER, be uncovered for observation; and such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given OWNER timely notice of his intention to cover such Work and OWNER has not acted with reasonable promptness in response to such notice.

13.4. Neither observations by OWNER nor inspections, tests, or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

13.5. Access to Work. OWNER and his representatives will, at reasonable times, have access to the Work. CONTRACTOR shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

13.6. Uncovering Work. If any Work is covered contrary to the written request of OWNER, it must, if requested by OWNER, be uncovered for his observation and recovered at CONTRACTOR'S expense.

13.7. If any Work has been covered which OWNER has not specifically requested to observe prior to its being covered or if OWNER considers it necessary or advisable that covered Work be inspected or tested by others, CONTRACTOR, at OWNER'S request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as OWNER may require that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including compensation for additional professional services and an appropriate deductive Change Order shall be issued. 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 if he makes a claim therefor as provided in Sections 11 and 12.

13.8. Owner May Stop the Work. If the work is defective or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment or if CONTRACTOR fails to make prompt payments to Subcontractors or for labor, materials, or equipment, 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.

13.9. Correction or Removal of Defective Work. If required by OWNER prior to approval of final payment, CONTRACTOR shall promptly, without cost to OWNER and as specified by OWNER, either correct any defective Work, whether or not fabricated, installed, or completed or, if the Work has been rejected by OWNER, remove it from the site and replace it with nondefective Work. If CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from OWNER, OWNER may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR and an appropriate deductive Change Order shall be issued. CONTRACTOR shall also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal, or replacement of his defective Work.

13.10. One (1) Year Correction Period. If, after the approval of final payment and prior to the expiration of one (1) year after the date of acceptance of final payment or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instruction, either correct such defective Work or, if it has been rejected by OWNER, remove it from the site and replace it with nondefective work. If CONTRACTOR does not promptly comply with the terms of such instructions, OWNER may have the defective work corrected or the rejected work removed and replaced. All direct and indirect cost of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

13.11. Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after approval of final payment, an appropriate amount shall be paid by CONTRACTOR to OWNER.

13.12. Neglected Work by CONTRACTOR. If CONTRACTOR fails to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, OWNER, after seven (7) days written notice to CONTRACTOR may, without prejudice to any other remedy he may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against CONTRACTOR if OWNER approves such action, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to OWNER.

SECTION 14 - PAYMENTS AND COMPLETION

14.1. Schedules. At least ten (10) days prior to submitting the first Application for Progress or Partial Payment ("Application"), CONTRACTOR shall submit a progress schedule, a final schedule of Shop Drawing submission, a critical path method schedule, and a schedule of values of the Work. These schedules shall be satisfactory in form and substance to OWNER. The schedule of values shall include quantities and unit prices aggregating the Contract Price and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedules of values by Owner and/or Engineer, it shall be incorporated into the form of Application for Payment furnished by OWNER.

14.1.1. Application for Progress or Partial Payment. At least ten (10) days before the date for each progress payment, the CONTRACTOR shall submit to the Owner or Engineer an Application for Payment,

supported by such data substantiating the CONTRACTOR's right to payment as the Engineer or OWNER may require. The Owner or Engineer shall, pursuant to paragraph 14.3, make a determination as to whether or not said application is properly payable based upon his determination and estimate of the value of the Work done and the materials delivered and stored at the site for the Work during the previous payment period. After the OWNER or Engineer has completed his evaluation and the Application for Payment has been approved by the OWNER, the OWNER will make payment to the CONTRACTOR in accordance with paragraph 14.1.2 below. Payment by the OWNER to the CONTRACTOR may be made by first-class mailing, electronic funds transfer or by hand delivery of the undisputed amount of a pay request based on work completed under the Contract.

14.1.2 In compliance with the New Mexico Retainage Act, NMSA 1978 § 57-28-1 *et seq* (2001) (aka Prompt Payment Act) as amended from time-to-time, retainage shall not be withheld on any construction contract within New Mexico.

If OWNER does not dispute or question CONTRACTOR's Application for Progress or Partial Payment, then OWNER shall pay CONTRACTOR the full amount within twenty-one (21) calendar days of receipt of the undisputed amount and if OWNER fails to do so, then OWNER shall pay CONTRACTOR interest, as required by the New Mexico Retainage Act, from the twenty-second (22nd) calendar day after said receipt at the rates set forth from time-to-time in the Retainage Act (currently set at one and one-half percent (1.5%) of the undisputed amount per month, or fraction of a month) until the payment is issued. Nothing in this Contract shall be construed as requiring OWNER to pay interest on disputed amounts or on CONTRACTOR claims.

CONTRACTOR and all Subcontractors shall make prompt payment, within seven (7) calendar days after receipt of payment from OWNER or CONTRACTOR, to their respective Subcontractors and suppliers for amounts owed for material or services performed for the Work. If CONTRACTOR or any Subcontractor fails to make such prompt payment, then CONTRACTOR and Subcontractor shall pay interest on such amounts at the rate and for the time period specified from time-to-time in the Retainage Act.

If the OWNER shall at any time fail to make a monthly payment at the time specified herein, such failure shall not be held to violate or void this Contract.

14.1.3. Upon request the CONTRACTOR shall file with the OWNER a receipt in full from each manufacturer, Subcontractor and dealer for all equipment and material used on the Work and a complete release on all Liens which may have arisen from this Contract.

14.1.4. Materials shall be stored either at the CONTRACTOR's storage area or at the construction site.

14.2. 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.

14.3. Approval of Payments. OWNER and/or Engineer will, within ten (10) calendar days after receipt of each Application for Payment, indicate in writing his approval of payment or will return the Application to CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. OWNER shall, upon presentation to him of an approved Application for Payment, pay CONTRACTOR the amount approved by OWNER and/or Engineer in accordance with paragraph 14.1.2 above.

14.4. OWNER's or Engineer's approval of any payment requested in an Application for Payment will be based on on-site observations of the Work in progress and on 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 his 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, 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. However, by

approving any such payment, OWNER or Engineer will not thereby be deemed to have represented that he made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work or that he has reviewed the means, methods, techniques, sequences, and procedures of construction or that he has made any examination to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to him 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.

14.5. OWNER's approval of final payment will constitute an additional representation that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.12 have been fulfilled.

14.6. OWNER or Engineer may refuse to approve the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations. OWNER or Engineer 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 his opinion to protect OWNER from loss because:

14.6.1. the Work is defective or completed Work has been damaged, requiring correction or replacement;

14.6.2. the CONTRACTOR has failed to comply with barricading requirements.

14.6.3. claims or Liens have been filed or there is reasonable cause to believe such may be filed;

14.6.4. the Contract Price has been reduced because of Modifications;

14.6.5. OWNER has been required to correct defective work or complete the work in accordance with paragraph 13.11; or

14.6.6. of unsatisfactory prosecution of the work, including failure to furnish acceptable submittals or to clean up.

14.7. Substantial Completion. Prior to final payment, CONTRACTOR may, in writing to OWNER, certify that the entire Project is substantially complete and request that a certificate of Substantial Completion be issued. Within a reasonable time thereafter, OWNER and CONTRACTOR shall make an inspection of the Project to determine the status of completion. If OWNER does not consider the Project substantially complete, the CONTRACTOR will be so notified in writing, giving reasons therefor. After CONTRACTOR has completed/corrected Work he shall again notify OWNER in writing, requesting a certificate of Substantial Completion. If owner feels the Project is substantially complete, OWNER will issue a Certificate of Substantial Completion which shall fix the date of Substantial Completion and the responsibilities between OWNER and CONTRACTOR regarding maintenance, heat, and utilities.

14.7.1 CONTRACTOR shall bear the risk of loss and damage with respect to the WORK at the site, as well as all OWNER furnished property and all materials and equipment in temporary storage both on and off the site, until the date of Substantial Completion.

14.8. OWNER shall have the right to exclude CONTRACTOR from the Project after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list (punchlist items).

14.9. Partial Utilization. Prior to final payment, OWNER may request CONTRACTOR in writing to permit OWNER to use a specified part of the Project which he believes he may use without significant interference with construction of the other parts of the Project. If CONTRACTOR agrees, he will certify to OWNER that said part of the Project is substantially complete and request an issue of certificate of Substantial Completion for that part of the Project. Within a reasonable time thereafter OWNER and CONTRACTOR shall make an inspection of that part of the Project to determine its status of completion. If OWNER does not consider that it is substantially complete, he will notify CONTRACTOR in writing giving

his reasons therefor. If OWNER considers that part of the Project to be substantially complete, he will execute and deliver to CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion and beginning of Warranty period if applicable as to that part of the Project, attaching thereto a tentative list of items to be completed or corrected before final payment and fixing the responsibility between OWNER and CONTRACTOR for maintenance, heat, and utilities as to that part of the Project. OWNER shall have the right to exclude CONTRACTOR from any part of the Project which has been certified to be substantially complete; but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list (punch list items). The issuance of such a certificate shall not operate to release the CONTRACTOR or his sureties from any obligation under this Contract or the performance bond.

14.10. Final Inspection. Upon written notice from CONTRACTOR that the Project is complete, OWNER and/or Engineer will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies (including tentative or punch list items previously identified).

14.11. Final Application for Payment. After CONTRACTOR has completed all such corrections to the satisfaction of OWNER and delivered all maintenance and operating instruction, schedules, guarantees, Bonds, certificates of inspection, as-built Plans and other documents - all as required by the Contract Documents - he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by such 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 the Contract Documents and the labor and services performed and the material and equipment furnished. Alternately, 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, material, and equipment for which a lien could be filed, and that all payrolls, material, and equipment bills, and other indebtedness connected with the work 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, materialman, fabricator, or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify him against any lien.

14.12. Approval of Final Payment. If, on the basis of his observation and review of the Work during construction, his final inspection, and his review of the final Application for Payment - all as required by the Contract Documents - OWNER and/or Engineer is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after receipt of the final Application for Payment, indicate in writing his approval of payment and present the Application to OWNER for payment. OWNER will then give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, he will return the Application to CONTRACTOR, indicating in writing his reasons for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. OWNER shall pay CONTRACTOR the amount approved.

14.13. After Substantial Completion of the Work, if final completion thereof is materially delayed through no fault of CONTRACTOR, OWNER shall, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted in accordance with paragraph 14.1.2 above. If the remaining balance for Work not fully completed or corrected is less than the amounts covered by Bonds which have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER prior to certification of 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.

14.14. CONTRACTOR'S Continuing Obligation. CONTRACTOR's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by OWNER, 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 Project or any part thereof by OWNER, nor any act of acceptance by OWNER, nor any failure to do so, nor any correction of defective work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents.

14.15. Waiver of Claims. The making and acceptance of final payment shall constitute:

14.15.1. a waiver of all claims by OWNER against CONTRACTOR other than those arising from unsettled Liens, from defective work appearing after final inspection pursuant to paragraph 14.10 or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and

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

14.16. Liquidated Damages. If CONTRACTOR shall neglect, fail or refuse to complete the Work within the time specified, or any proper extension thereof, granted by the OWNER, then the CONTRACTOR agrees, as a part consideration for the awarding of this Contract, to pay to the OWNER the amount specified in the Invitation to Bid - Construction Contract, not as a penalty but as liquidated damages for such breach of contract, for each and every Calendar Day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the Work.

14.17. General. If the OWNER fails to pay the CONTRACTOR within twenty-one (21) calendar days after receipt of an undisputed Application for Progress or Final Payment, the OWNER shall pay an interest penalty to the CONTRACTOR in accordance with paragraph 14.1.2 above. In addition, the CONTRACTOR and Subcontractors shall make prompt payment to their Subcontractors and suppliers for amounts due and owing in accordance with paragraph 14.1.2. These payment provisions apply to all tiers of CONTRACTORS, Subcontractors, and suppliers.

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 Engineer which shall fix the date on which work shall be resumed, CONTRACTOR will be allowed an extension of the contract time directly attributable to any suspension if he makes a claim as provided in Section 12.

15.2. Owner May Terminate. If CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or if he disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction, or if he disregards the authority of OWNER, or if he otherwise violates any provision of the Contract Documents, then OWNER may, without prejudice to any other right or remedy and after giving CONTRACTOR and his Surety seven (7) days written notice, terminate the services of CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereof owned by CONTRACTOR and finish the Work by whatever method he 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 and indirect costs of completing the Project, including compensation for additional professional services, such excess shall 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 incorporated in a Change Order.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, this termination 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.

15.4. Upon seven (7) days written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

15.5. 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 OWNER 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 or awarded by arbitrators within thirty (30) days of its approval and presentation, then CONTRACTOR may, upon seven (7) days written notice to OWNER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if OWNER has failed to act on an Application for Payment or OWNER has failed to make any payment as required, CONTRACTOR may, upon seven (7) days written notice to OWNER, stop the Work until he has been paid all amounts then due.

SECTION 16 – DISPUTE RESOLUTION

16.1. Prior to instituting arbitration, or other legal proceedings, the parties shall first meet, confer, and attempt to negotiate a resolution of any claim or dispute related to or arising out of this Agreement. For CONTRACTOR Claims, this negotiation session shall occur within thirty (30) days after OWNER receives written notice of a claim, together with the supporting data as required by Section 11.2. For OWNER Claims, the negotiation session shall occur within thirty (30) days after the OWNER gives written notice to the CONTRACTOR of the nature of the claim or dispute, together with a request for a negotiation session.

16.2. If the claim of dispute is not resolved by the negotiation session, then the matter will be submitted to mediation, pursuant to the New Mexico Public Works Mediation Act, § 13-4C-1, NMSA (1997 Repl.) as amended, to the date of execution of this Contract Document.

Notice of the mediation shall be sent within thirty (30) days after the date of the negotiation session.

16.3. If the claim or dispute is not resolved through mediation, and if the aggregate amount of the claims between OWNER and CONTRACTOR does not exceed two hundred fifty thousand dollars (\$250,000), then the claim or dispute arising out of or relating to this Contract Document shall be submitted to binding arbitration pursuant to the New Mexico Uniform Arbitration Act, § 44-7A-1, *et. seq.*, NMSA (2001). This Contract Document to Arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final and judgment may be entered upon it in any Court having jurisdiction thereof. A written demand for arbitration, describing the nature of the claim, shall be made within thirty (30) days after the date of the mediation. In no event shall the demand for arbitration be made after the institution of legal or equitable proceedings based on any such claim would be barred by the applicable statute of limitations. CONTRACTOR will carry on the work and maintain the progress schedule during any dispute resolution proceedings, unless otherwise agreed to by the OWNER and CONTRACTOR in writing.

16.4 If the claim or dispute is not resolved through mediation, and if the aggregate amount of the claims between the OWNER and CONTRACTOR exceeds two hundred fifty thousand dollars (\$250,000), then the claim or dispute between the OWNER and CONTRACTOR shall be decided by the District Court, San Juan County, New Mexico, and shall be subject to all applicable appeals.

SECTION 17 - MISCELLANEOUS

17.1. Giving Notice. Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or sent by mail, postage prepaid, to the last business address known to him who gives the notice.

17.2. Computation of Time. When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a Legal Holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

17.3. All Specifications, Drawings, and copies thereof furnished by OWNER shall remain his property. They shall not be used by CONTRACTOR on another Project and, with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to OWNER on request upon completion of the Project.

17.4. The duties and obligations imposed by these Contract Conditions and the rights and remedies available hereunder and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by paragraphs 6.29, 13.1, 13.10 and 14.2 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 them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

17.5. 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.

17.6. The Contract Documents shall be governed by the law of the state of New Mexico.

17.7. Minimum Wages (Federal). In the event that any work under this contract involved 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.

17.8. Archaeological Salvage and Reports. 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 the CONTRACTOR's operations are performed, the CONTRACTOR shall postpone operations in the area, shall preserve such objects from disturbance or damage, and shall immediately notify the OWNER of their existence and location.

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

17.9. 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 appropriate sections of the City of Farmington Technical Specifications and Construction Standards; 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 100 linear feet measured horizontally.

Volumetric quantities shall be determined by the average end area method.

17.10. Method of Measurement. Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the method stipulated in the particular sections herein

covering materials or types of work. When material is to be paid for on a volume basis and it would be impracticable to determine volume by the specified method of measurement or when requested by the CONTRACTOR and approved by the OWNER, the material will be weighted 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 the OWNER and shall be agreed to by the CONTRACTOR before such method of measurement of pay quantities will be adopted.

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 3% if the material is to be treated with bitumen and 6% if the material is to be waterbound.

17.11. Certified Weights. All materials to be paid for at a contract unit price per ton shall be weighed on platform scales furnished by the CONTRACTOR or his supplier of materials at the CONTRACTOR's expense, or such materials may be weighed on certified public scales at the CONTRACTOR's expense. All scales shall be of adequate size to permit the entire vehicle to rest on the scale platform while being weighed. Scales furnished by the 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 with a minimum floor area of thirty-two (32) square feet and equipped with adequate heat and light.

17.12. Compliance with Affirmative Action Plan. The CONTRACTOR shall include and follow the provisions of the Affirmative Action Program of the City of Farmington as adopted annually by the Farmington City Council, the terms of such Affirmative Action Plan being incorporated herein and made a part hereof by reference.

17.13. Compliance with other Applicable Federal Requirement. CONTRACTOR will comply with all applicable Federal requirements which may be encountered or connected with this Project.

17.14. Compliance with Copeland Anti-Kickback Act and Regulations. The CONTRACTOR shall comply with the Copeland Anti-Kickback Act and Regulations of the Secretary of Labor (29 CFR, Part 3) which are incorporated into this Contract.

17.15. Compliance with Safety Standards. CONTRACTOR will comply with the safety standards provisions of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" latest revision published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 Public Law 91-596, and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75 Saturday, April 17, 1971 together with any amendments or modifications to any of the foregoing which are applicable to CONTRACTOR's performance of this Contract.

17.16. Compliance with Uniform Guidance (2 CFR 200). CONTRACTOR will comply with all requirements of 2 CFR 200, Uniform Guidance. The Contractor shall take affirmative steps per 2 CFR 200.321, Contracting with small and minority business, women's business enterprises, and labor surplus area firms.

SECTION 18 - SPECIAL NOTICE TO CONTRACTOR - STATE OF NEW MEXICO LABOR AND INDUSTRIAL DIVISION

18.1. Minimum Wages. The CONTRACTOR and any Subcontractor performing work under this contract shall comply fully with the "Public Works Minimum Wage Act" Section 13-4-11 through 13-4-17, NMSA 1978 and all amendments thereto, which provides in part that "the contractor, subcontractor, employer or 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 not less than those stated in the minimum wage rates issued for the project."

The CONTRACTOR, Subcontractor, employer or any person acting as a CONTRACTOR shall pay each of his employees working under this contract in full, in cash, and not less than once a week, less all legally required deductions or withholding. When circumstances are such that payment in cash is not feasible or is impractical, payment may be made by check, provided however, that adequate funds to cover same are on deposit at the bank upon which the checks are drawn, and further that the checks may be cashed without charge, trade requirements or undue inconvenience to the payee. The minimum hourly rate of wage which may be paid to workmen in each trade or occupation required for the Work under the Contract employed in the performance of the Contract either by the CONTRACTOR, Subcontractor, employer or any person acting as a CONTRACTOR shall be as set forth in the schedule of minimum wage rates appearing in these Contract Documents, and the workmen employed in the performance of the Contract shall be paid not less than the applicable specified minimum hourly rate of wage as such is set forth in said schedule.

The scale of wages to be paid shall be posted by the CONTRACTOR or person acting as a CONTRACTOR in a prominent and easily accessible place at the Worksite; and it is further provided that there may be withheld from the CONTRACTOR, Subcontractor, employer or any person acting as a CONTRACTOR so much of accrued payments as may be considered necessary by the OWNER to pay to laborers and mechanics employed on the Project the difference between the rates of wages required by the Director of the Labor and Industrial Division of the Labor Department to be paid to laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the CONTRACTOR, Subcontractors, employer or any person acting as a CONTRACTOR or their agents

18.1.1. The attention of the CONTRACTOR and any Subcontractor performing work under this Contract is directed to Section 13-4-12, NMSA 1978 which reads in part as follows:

A. As used in Section 13-4-11 NMSA 1978 'wages', 'scale of wages', 'wage rates', 'minimum wages', and 'prevailing wages' include:

1) The basic hourly rate of pay, and

2) The amount of:

(a) the rate of contribution irrevocably made by a contractor, subcontractor, employer or any person acting as a contractor to a trustee or a third person pursuant to a fund, plan or program; and

(b) the rate of costs to a contractor, subcontractor, employer or any person acting as a contractor which reasonable may be anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected for: 1) medical or hospital care; 2) pensions on retirement or death; 3) compensation for injuries or illness resulting from occupational activity; or 4) insurance to provide for any of the foregoing; and for: 5) unemployment benefits; 6) life insurance; 7) disability and sickness insurance; 8) accident insurance; 9) vacation and holiday pay; 10) costs of apprenticeship or other similar programs; or for 11) other bona fide fringe benefits; but only where the contractor, subcontractor, employer or person acting as a contractor is not required by other federal, state, or local law to provide any of the foregoing or similar benefits.

B. The obligation of a contractor, subcontractor, employer or person acting as a contractor to make payment in accordance with the prevailing wage determinations of the director of the labor and industrial division of the labor department, insofar as Section 13-4-11 NMSA 1978 or other sections of legislative acts incorporating Section 13-4-11 NMSA 1978 are concerned, may be discharged by:

(1) the making of payments in cash;

(2) the making of contributions of a type referred to in Subparagraph (a) of Paragraph (2) of Subsection A of this section; or

(3) the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in Subparagraph (b) of Paragraph (2) of Subsection A of this section or any combination thereof where the aggregate of any payments or contributions and costs therefor is not less than the rate of pay described in Section 13-4-11 NMSA 1978 plus the amount referred to in this section.”

18.1.2. In the event it is found by the Director of the Labor and Industrial Division of the Labor Department that any laborer or mechanic employed by the 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 of a rate of wages less than the rate of wages required by the Contract, the OWNER may, by written notice to the CONTRACTOR, Subcontractor, employer or person acting as a CONTRACTOR terminate their right to proceed with the work or such part of the Work as to which there has been a willful failure to pay the required wages, and the OWNER may prosecute the Work to completion by contract or otherwise, and the CONTRACTOR or person acting as a CONTRACTOR and his sureties shall be liable to the OWNER 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 finding of the Director of the Labor and Industrial Division as provided in the Public Works Minimum Wage Act.

18.1.3. There is no representation on the part of the OWNER that labor can be obtained at the hourly rates shown in these Contract Documents. It is the responsibility of Bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates. No increase in the Contract Price shall be allowed or authorized on account of the payment of wage rates in excess of those listed.

18.1.4. Payrolls and basic records relating thereto will be maintained during the course of the Work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the Work.

18.1.5 The CONTRACTOR will submit one complete, legible, certified weekly payroll record to the Labor and Industrial Division. One copy shall be sent to the OWNER. Both copies must be mailed not more than five working days following the close of the second payroll period. Weekly payrolls may be submitted bi-weekly. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Labor and Industrial Division and that the Classifications set forth for each laborer or mechanic conform with the work he performed. The prime CONTRACTOR shall be responsible for submitting copies of payrolls of all Subcontractors. The CONTRACTOR shall make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State and Federal Government and the Labor and Industrial Division and shall permit such representatives to interview employees during working hours on the job.

18.1.5.1. Form and Content: Weekly payrolls are required from the CONTRACTOR and/or Subcontractor and shall include the payroll clerk’s phone number and all of the following information:

(1) The employee's full name, address, and social security number.

(a) The employee's full name and social security number need only appear on the first payroll on which his/her name appears.

(b) The employee's address need be shown only on the first submitted payroll on which his/her name appears, unless a change of address necessitates an additional submittal to reflect the new address.

(2) The employee's classification (or classifications).

(3) The employee's hourly wage rate (or rates); the employee's hourly fringe benefits; and, where applicable, his overtime hourly wage rate (or rates).

(4) The daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

(5) The itemized deductions made.

(6) The net wages paid.

(7) The number of the project wage rate decision (from top right of decision), including the county.

18.1.5.2. Numbering Payrolls: All payrolls shall be numbered starting with number one (1) for the first payroll at the beginning of the job and continuing in numerical order (including weeks of no work) until the job is completed with the last payrolls marked final.

18.1.5.3. Any apprentices, pre-apprentices, or trainees employed on the Project must be duly registered in a bona fide apprenticeship program registered with the State Apprenticeship Council or recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor. Certification showing registration status of apprentices, pre-apprentices, or trainees must accompany the first full payroll on which each apprentice, pre-apprentice, or trainee appears. There must be a least one journeyman on the Worksite in the same job classification for each apprentice during the hours worked by the apprentice.

18.1.5.4. Certification of Payrolls: The CONTRACTOR and each of his Subcontractors shall submit a weekly statement of compliance in the form required by the Labor and Industrial Division.

18.2. Apprenticeship and Training: The CONTRACTOR shall make contributions to approved apprentice and training programs in New Mexico in which the CONTRACTOR is a participant or to the Public Works Apprentice and Training Fund administered by the Public Works Bureau, Labor and Industrial Division, New Mexico Department of Labor, pursuant to the Public Works Apprenticeship and Training Act, Section 13-4D-1 through 13-4D-8 NMSA 1978. The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade that they are learning, and under the direct supervision of the journeyman or master mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the CONTRACTOR or any Subcontractor shall not exceed the number permitted by the applicable standard of the United States Department of Labor, or in the absence of such standards, the number permitted under the usual practice prevailing between trade unions and Employers Association of the respective trades or occupations.

18.3. Extra Work - Minimum Wage: In case the OWNER orders the CONTRACTOR to perform Extra Work or additional Work which may make it necessary for the 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, the CONTRACTOR shall notify the OWNER of the job classification. The OWNER may make a written request for such classification to the Director, Labor and Industrial Division. If approved, an addendum will be issued. If a rate is not requested or not approved, the free market shall determine the rate paid.

18.4. Wage Underpayments and Adjustments: The CONTRACTOR agrees that, in case of underpayment of wages to any worker on the Project under this Contract, the 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 the OWNER may disburse such amount so withheld by it for and on account of the CONTRACTOR to the employee to which such amount is due. The CONTRACTOR further agrees that the amounts to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this contract.

A copy of the Labor and Industrial Division minimum wage rates and in effect at the time of the Contract shall be posted in a prominent and easily accessible place at the Worksite or otherwise made available to the CONTRACTOR's employees at all times on the job.

SECTION 19 - NEW MEXICO STATUTES RELATING TO UNLAWFUL DISCRIMINATORY PRACTICE (28-1-1 TO 28-1-15 NMSA 1978) - 28-1-7 NMSA 1978 AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 – 49 CFR PART 21. Unlawful discriminatory practice.

In responding to this solicitation, the Bidder represents that it will not practice unlawful discrimination per Section 28-1-7 NMSA 1978 and Title VI of the Civil Rights Act of 1964 - 49 CFR part 21, with regard to, but not limited to, the following: race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, age or serious medical condition.