

**SPECIFICATIONS AND CONTRACT DOCUMENTS
FOR THE CONSTRUCTION OF:
GRIGGS RESERVOIR OUTFALL STRUCTURE MODIFICATIONS
AND STORM DRAIN IMPROVEMENTS**

.....

**CITY OF ALAMOGORDO, NEW MEXICO
PUBLIC WORKS BID NUMBER 2018-003
EDA AWARD NO. 08-79-05104**

FEBRUARY 2018

TITLE SHEET
CITY OF ALAMOGORDO, NEW MEXICO
RICHARD A. BOSS, MAYOR

| | |
|---------------|--------------------|
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| COMMISSIONER | SUSAN L. PAYNE |
| COMMISSIONER | NADIA SIKES |
| COMMISSIONER | AL HERNANDEZ |
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| CITY CLERK | RACHEL HUGHS |
| CITY ATTORNEY | PETRIA SCHREIBER |

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

**GRIGGS RESERVOIR OUTFALL STRUCTURE
MODIFICATIONS AND STORM DRAIN IMPROVEMENTS**

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SECTION 1 - ADVERTISEMENT FOR BIDS

Sealed Bids will be received by the **City of Alamogordo in City Hall Commission Chambers, 1376 East Ninth St., Alamogordo, New Mexico, 88310**, for the construction of the Project known as "**Griggs Reservoir Outfall Structure Modifications and Storm Drain Improvements**", Public Works Bid No. **2018-003**, until **2:00 P.M. (MDT) on May 31, 2018**, at which time the Bid Opening and reading of the Bids received will begin, in **City Hall Commission Chambers, 1376 East Ninth St. Alamogordo, NM**. The tabulation of Bids will be considered by the City Commission of the City of Alamogordo at its next regular meeting, or at a later meeting if required.

The work will consist of earthwork, construction of a new storm drain system, and construction of a new spillway and riser outlet.

Construction Industries Division (CID) Classification Determination is GF03, GF04, or GF98. In accordance with the provisions of the New Mexico Construction Industries Licensing Act, all project work must be performed by properly licensed contractors and subcontractors with active licenses in good standing as of the date and time specified for Bid Opening. The City has determined that the Contractor shall possess a valid license classification as specified above or other appropriate license classification under the Construction Industries Licensing Act at the time the contract is Bid. Any work outside the scope of the Prime Contractor's classification(s) must be subcontracted. Any work subcontracted by a Prime Contractor must be performed by an entity that is validly licensed in the classification(s) of the work that is to be subcontracted as of the date and time specified for Bid Opening. Bids that not satisfy applicable licensing requirements will be considered non-responsive.

Specifications and Drawings will be available to BIDDERS on the **City website through the Vendor Registration and Bid Notification System** or by CD. Requests may be faxed to (575) 439-4117, or emailed to cquairol@ci.alamogordo.nm.us. **The CD will be provided at no charge.** If the CD is to be mailed, the requestor shall supply the Purchasing Department with a **pre-paid mailing account** and the appropriate information required for delivery.

A non-mandatory Pre-Bid Conference will be held at **2:00 p.m. (MDT) on May 9, 2018**, at Public Works Administration Office, 2600 N. Florida Ave., Alamogordo, NM.

Prospective BIDDERS are advised that there will be **NO 10% Bid Evaluation Criterion** for area businesses that will apply to this Project (**NO LOCAL PREFERENCE**).

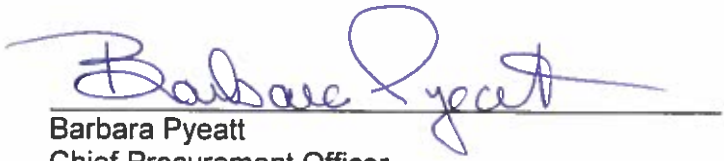
Each Bid shall be accompanied by a Bid Security in the amount of not less than five (5) percent of the total Bid amount.

The successful BIDDER will be required to furnish a Performance Bond and a Payment Bond in the amount of one hundred (100) percent of the Bid amount to assure performance of the Contract, and payment for all labor and materials of the Contract.

No Bids may be withdrawn after the scheduled closing time for receipt of Bids, and the City of Alamogordo reserves the right to reject any or all Bids and waive all technicalities and formalities.

No BIDDER may withdraw their Bid within thirty (30) days after the actual date of the Bid Opening thereof.

Attention of BIDDERS is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the Contract.



Barbara Pyeatt
Chief Procurement Officer

Advertised on April 29, 2018 in:

Alamogordo Daily News
Albuquerque Journal

SECTION 2 - INSTRUCTIONS TO BIDDERS

1.0 DEFINED TERMS

Terms used in these Instructions to BIDDERS which are defined in the General Conditions of the Construction Contract have the meanings same assigned in the General Conditions. The term "BIDDER" means one who submits a bid directly to OWNER, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful BIDDER" means the lowest, qualified, responsible and responsive BIDDER to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to BIDDERS, the Bid Schedule, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

2.0 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

Before submitting a bid, each BIDDER must:

- A. Examine and study the Project Plans and Contract Documents thoroughly.
- B. Visit the site to become familiar with local conditions that may in any manner affect performance of the Work or the bid submitted.

Before submitting a Bid, each BIDDER may, at BIDDER's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which BIDDER deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

Any explorations or tests that each BIDDER deems necessary for submission of the bid shall be coordinated and performed with the prior approval of the City of Alamogordo. Any work of this nature will be done in strict compliance with all applicable permits, requirements and regulations.

- C. Be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance of the work and employment of labor.
- D. Carefully correlate any observations with the requirements of the Contract Documents.
- E. Notify ENGINEER of all conflicts, errors or discrepancies in the Contract Documents.
- F. Note that information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities or others, and neither the ENGINEER nor the OWNER assumes responsibility for the accuracy or completeness thereof. It shall be the CONTRACTOR's sole responsibility to locate and protect all utilities and structures before any work commences.

The submission of a bid will constitute an incontrovertible representation by BIDDER that BIDDER has complied with all requirements contained herein, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

3.0 INTERPRETATIONS AND ADDENDA

All questions about the meaning or intent of the Contract Documents shall be submitted via fax (575) 439-4117 or e-mail bpyeatt@ci.alamogordo.nm.us. Questions received after 3:00 P.M. on May 18, 2018 will not be answered. Submitted questions will be answered by formal written addendum and will be binding. Oral clarification will not be binding.

Each Addendum shall be made part of the Contract Documents to the same extent as though contained in the original documents and itemized listings thereof. On the Bid Proposal, each BIDDER shall acknowledge receipt of each Addendum.

4.0 CONTRACT TIME

The CONTRACT TIME is the number of calendar days within which, or the dates by which, the Work is to be substantially completed and ready for Final Payment (the Contract Time) as set forth in the AGREEMENT, Section 8. This time may be defined as a specified fixed date or a given number of calendar days. The Contract Time may be amended by mutual written Agreement to include authorized time extensions as the performance of the Contract requires.

5.0 LIQUIDATED DAMAGES

Provisions for liquidated damages are set forth in the AGREEMENT, Section 8.

6.0 SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitutes or "or-equal" items. Whenever it is indicated in the Drawings or in the Specifications that a substitute or an "or-equal" item of material or equipment may be furnished or used by the CONTRACTOR, if acceptable to ENGINEER, application for acceptance will not be considered by ENGINEER until after the Effective Date of the AGREEMENT. The procedure for the submission of any such application by the CONTRACTOR for consideration by the ENGINEER is set forth in the General Conditions.

7.0 SUBCONTRACTORS

BIDDERS will submit to OWNER a list of all Subcontractors and other persons and organizations proposed for those portions of the Work whose value in services is \$5,000.00 or 1/2 of 1 percent of the engineer's estimate (excluding NMGRT), whichever is higher. **SUCH LIST WILL BE COMPLETED AND SUBMITTED WITH THE BID AND SHALL INCLUDE THE NAME AND ADDRESS OF EACH SUBCONTRACTOR AND THE NATURE OF THE WORK TO BE PERFORMED.** If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, other person, or organization, they may before giving

the Notice of Award, request the Apparent Low BIDDER to submit an acceptable substitute Subcontractor without an increase in the Bid Price. If the Apparent Low Bidder declines to make any such substitution, he will not thereby sacrifice his Bid Security. Any Subcontractor, other person, or organization so listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER.

The CONTRACTOR shall not be required to employ any Subcontractor, other person, or organization against whom CONTRACTOR has reasonable objection.

The BIDDER is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract must be acceptable to the OWNER.

8.0 WAGE RATES

The BIDDER's attention is directed to the fact that the prevailing Federal and State Wage Rate Decisions contained in Section 12, herein, shall also be made a part of the Contract. It shall be the BIDDER'S responsibility thoroughly be informed of all state, federal and local laws and statutes pertaining to the employment and shall strictly adhere to such laws and regulations.

9.0 COLLUSION - GENUINE BID

The BIDDER, by submitting a Bid, certifies that the Bid is genuine and is not a sham or collusive, or made in the interest, or in the behalf of any person not named as BIDDER, and that the BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a sham Bid, or any other person, firm or corporation to refrain from bidding, and that the BIDDER has not in any manner sought by collusion to secure himself an advantage over any other BIDDER.

10.0 QUANTITIES

The quantities set forth in the Bid Proposal are estimated quantities. Payment will be made at the unit price bid amounts for the Work actually performed. The OWNER reserves the right to increase or decrease quantities. The CONTRACTOR shall not be paid for any portion of the Project built beyond plan dimensions and thickness. The OWNER has the right (and BIDDER by submission of a Bid, agrees OWNER has this right) to increase or reduce the quantities shown in the Bid Schedule up to twenty-five (25) percent before the CONTRACTOR can present a claim to adjust the unit bid prices.

11.0 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the CONTRACTOR agrees as follows:

The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, age, sexual preference, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, age, sexual preference, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

12.0 GROSS RECEIPTS SURETY BOND

Effective July 1, 1975, New Mexico House Bill 262 added Section 7-1-55, NMSA 1978 to the Tax Administration Act, Subsection A, provides for any person engaged in the construction business, as defined in Section 7-9-3, NMSA 1978, who does not have its principal place of business in New Mexico and enters into a prime construction contract to be performed in this state, at the time such contract is entered into, to furnish the Commissioner of Revenue or an authorized delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract, multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4, NMSA 1978, plus the rate of tax imposed by the local option gross receipts tax. Upon receipt of a surety bond, or other acceptable security, the Commissioner, or the delegate, shall issue a certificate stating that the requirements of this Section have been met.

13.0 SAFETY STANDARDS AND ACCIDENT PREVENTION

With respect to all Work performed under this Contract, the CONTRACTOR shall:

- A. Comply with the safety standards provisions of applicable laws, building and construction codes, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596).
- B. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- C. Maintain in the Project Office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

14.0 WORK ON OR ADJACENT TO PRIVATE PROPERTY

The CONTRACTOR shall be required to provide access for the residents and businesses along the construction route to the satisfaction of the OWNER. In addition, any private improvements that exist shall be preserved against damage from the CONTRACTOR's activities. The CONTRACTOR shall be required to remove and rebuild any improvements damaged during construction at his sole expense. These improvements include but are not limited to: buildings, fences, sidewalks, structures, walls, driveways, and landscaping. The CONTRACTOR shall not be allowed to make a claim for additional Time or expense due to rebuilding improvements damaged by construction activities.

Except as specified otherwise, in the execution of work on private property, the CONTRACTOR shall make all arrangements with the private property owners to the satisfaction of both the private owner and the OWNER before proceeding with the Work. Items removed on private

property to facilitate access to the Work shall be replaced to a condition satisfactory to both the private property owner and the OWNER at the cost of the CONTRACTOR.

15.0 TWELVE (12) HOUR CALL-OUT NOTICE

The CONTRACTOR shall be required to maintain a clean, safe work site as well as adequate, safe access for all residents and businesses along the construction routes, to the satisfaction of the OWNER. This Work shall include any measures necessary to keep the site clean and safe, and provide access, including but not limited to routine sweeping, treatment to prevent blowing soil, complete removal of mud, grading, temporary driveways, and import of dry suitable material to form temporary driving surfaces.

Upon verbal notification by the ENGINEER, the CONTRACTOR shall perform whatever measures necessary to provide the required cleanup for adequate and safe site conditions and access to adjacent property. The CONTRACTOR shall have twelve (12) hours to respond and begin the work required to cleanup the work site or provide said access.

Failure by CONTRACTOR to respond and begin corrective work within twelve (12) hours will cause OWNER to hire an independent CONTRACTOR to perform the Work required, as determined solely on the ENGINEER's opinion, and withhold all expenses incurred from the CONTRACTOR's Payment for the Project. The CONTRACTOR, by submission of a bid, agrees to the above stated conditions and is required to sign the call out notice acknowledgment in Section 3 - Bid Schedule.

16.0 COPIES OF BIDDING DOCUMENTS

Specifications and Drawings will be available to BIDDERS on the **City website through the Vendor Registration and Bid Notification System** or by CD. Requests may be faxed to (575) 439-4117, or emailed to cquairol@ci.alamogordo.nm.us. **The CD will be provided at no charge.** If the CD is to be mailed, the requestor shall supply the Purchasing Department with a **pre-paid mailing account** and the appropriate information required for delivery.

Complete sets of Bidding Documents must be used in preparing Bids. Neither OWNER nor the ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

17.0 SUBMISSION OF BIDS

The following Bid documents are to be submitted as the Bid:

Section 3 – Bid Schedule;

Section 4 – Subcontractor's Fair Practice Act Compliance;

Section 5 – Bid Bond;

Section 6 – Statement of Bidders Qualifications;

Section 7 – Campaign Contribution Disclosure Form;

Section 15 – Certification Regarding Lobbying;

Copy of State of New Mexico, Construction Industries Division, License; and

Copy of New Mexico Department Workforce Solutions, Certificate of Public Works Registration.

Prices shall be filled in for all items on the Bid Schedules. The Bid Schedule must be completed in ink, by typewriter or laser/inkjet printer.

Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed to the bid and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature, and the official address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Schedule), and acknowledgment of the Twelve (12) Hour Call-Out Notice.

Bids shall be submitted before the time and place stated herein. Bids received after the Bid Opening time will be returned unopened. Faxed bids will not be accepted.

The address and telephone number for communications regarding the Bid must be shown.

Alterations to Bid amounts by erasures or by interlineations shall be initialed by the signer of the Bid. Any Bid not duly signed will not be considered. All Proposals shall be submitted and received with the understanding that the BIDDER accepts the terms and conditions as set forth herein.

Each Bid, accompanied by the Bid Security and all other required documents shall be placed in a sealed opaque envelope marked with the words "Bid Proposal", the Project title, the Public Works Bid Number (shown on the title sheet of the Specification book), Attn: Brian Cesar, Utilities Director, and the name and address of the BIDDER.

18.0 QUALIFICATIONS OF BIDDERS

BIDDER must be registered with the New Mexico Department of Workforce Solutions. The BIDDER must hold the proper license classification(s) for the Work to be performed. To demonstrate qualifications to perform the Work, each BIDDER must submit with their Bid, the "Statement of Bidder's Qualifications" contained in Section 6 herein. The City of Alamogordo reserves the right to require additional information and to reject any and all bids from BIDDERS that OWNER determines not to be qualified to carry out the obligations of the contract and complete the Project.

A subcontractor that submits a bid valued at more than sixty thousand dollars (\$60,000) shall be registered with the New Mexico Department of Workforce Solutions.

19.0 BID SECURITY

Bid Security in the amount of five (5) percent of the amount of the bid shall accompany the Bid Proposal. This Bid Security must be in the form of a certified or bank's cashier's check, payable without condition or recourse, to the OWNER or it may be a Bid Bond issued by a surety licensed to conduct business in the State of New Mexico and be named in the current list of the Insurance Division, State Corporation Commission, Santa Fe, New Mexico.

The attached Bid Security is to become the property of the OWNER in the event the AGREEMENT and Bonds are not executed within the time specified in this Bid Proposal as liquidated damages for the delay and additional expenses caused the OWNER.

The Bid Security is submitted as a guarantee that the BIDDER, if awarded the Contract, will execute such Contract in accordance with the Bid Schedule - Section 3, and in the manner and form required by the Contract Documents.

The Bid Security of the three (3) lowest Bidders will be retained until the Contract is awarded or other disposition is made. The Bid Security of all Bidders except the three (3) lowest will be returned promptly after the canvass of bids. Bid Proposals submitted without the required Bid Security will not be considered. Attorneys-in-fact who sign the Bid Security must file a certified and effective dated copy of their power of attorney.

The Bid Security of the successful BIDDER will be retained until such BIDDER has Executed the Agreement and furnished the required Contract security, whereupon the Bid Security will be returned. If the successful BIDDER fails to Execute and deliver the Agreement and furnish the required Contract security within ten (10) days after the Notice of Award, OWNER may annul the Notice of Award and the Bid Security of that BIDDER will be forfeited. The Bid Security of other BIDDERS whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh (7th) day after the Effective Date of the AGREEMENT or the sixty-first (61st) day after the Bid Opening, whereupon Bid Security furnished by such BIDDERS will be returned.

20.0 GROSS RECEIPTS TAXES, PERMITS AND LICENSES

Prices stated in the Bid Proposal shall not include applicable State gross receipts or applicable local option taxes. The CONTRACTOR will be reimbursed for the actual gross receipts tax liability incurred during construction. The CONTRACTOR will be responsible for all permits and licenses required to perform the Work.

21.0 OPENING OF BIDS

BIDDERS are invited to be present at the Bid Opening. The person reading the Bids will utilize the following procedure prior to reading the amount of the Bid:

- A. Read name of BIDDER and BIDDER's New Mexico contractor's license number and classification.
- B. Check for list of Subcontractors to be utilized on the Project.
- C. Verify that the proper Bid Security is enclosed.
- D. Verify receipt of the Statement of Bidder's Qualifications.
- E. Verify Bidder's acknowledgment of each Addendum issued, if any.
- F. Verify Bidder's acknowledgment of the Twelve (12) Hour Call-Out Notice.
- G. Determine whether the Bid Proposal is signed.

- H. Verify receipt of State of New Mexico, Construction Industries, License.
- I. Verify receipt of New Mexico Department Workforce Solutions, Certificate of Public Works Registration.
- J. Verify receipt of Campaign Contribution Disclosure Form.
- K. Verify any other information that may be required from other funding sources.
- L. Proceed with reading the Bid amounts.

If any of the requirements of the Contract Documents have not been met, the Bid shall be subject to rejection based solely on the OWNER'S discretion.

22.0 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

The OWNER will require time to study and canvass each Bid to determine which Bid is in the best interest of the OWNER. In consideration thereof, no Bid Proposal may be withdrawn after the scheduled closing time for receipt of Bids, for a period of thirty (30) days. The OWNER may return any or all Bids along with the Bid Security prior to that date.

23.0 AWARD OF CONTRACT

The OWNER reserves the right to reject any and all Bids, to waive any and all formalities. Also, OWNER reserves the right to reject the Bid of any BIDDER if OWNER believes that it would not be in the best interest of the OWNER to make an award to that BIDDER.

In evaluating bids, the OWNER will consider the qualifications of the BIDDERS as well as other prescribed requirements, and such alternates, Unit Prices and other data, as may be requested in the Bid Schedule or by the OWNER prior to the Notice of Award.

The OWNER may consider the qualifications and experience of the CONTRACTOR, Subcontractors, suppliers, and other persons and organizations proposed in evaluating the Bids. The OWNER may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

The OWNER may conduct such investigations as deemed necessary in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of each BIDDER, proposed Subcontractors, suppliers and other persons and organizations to perform and furnish the Work. If requested by the OWNER, the BIDDER shall provide a certified statement of financial condition.

The Contract will be Awarded to the BIDDER whose evaluation by the OWNER indicates that said Award will be in the best interests of the Project.

If the Contract is to be Awarded, OWNER will give the Successful BIDDER a Notice of Award within forty-five (45) days after the day of the Bid Opening. BIDDERS are hereby notified that, if Awarded the Contract, they **MAY NOT** assign Payments due under the Award without

permission of the OWNER. Further, BIDDERS are notified that consent to such assignments will be rarely granted.

24.0 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND, AND CERTIFICATE OF INSURANCE BOND

Upon receipt of Notice of Award, the BIDDER will Execute the formal Contract Documents within ten (10) days and deliver the Performance Bond, Labor and Material Bond and Certificate of Insurance as required herein, naming the OWNER as co-insured. Each Surety Bond shall be in the amount of one hundred (100) percent of the total Contract Price as security for the faithful performance of the Contract and for the payment of all labor and materials. The sureties on such bonds shall be duly authorized to conduct business in the State of New Mexico and acceptable to the OWNER and shall otherwise meet the requirements set forth in the Contract Documents. Attorneys-in-fact who sign Payment and Performance Bonds must file with each bond a certified and effective dated copy of their power of attorney. Sureties must also identify a service agent in the State of New Mexico.

OWNER reserves the right to require that any Bond furnished pursuant to the Contract Documents be in a form acceptable to OWNER. OWNER may reject any Bond which is not acceptable. CONTRACTOR'S inability to provide a Bond acceptable to OWNER may serve to render the Bid non-responsive.

25.0 EXECUTION OF CONTRACT

The Contract Agreement shall be Executed in two (2) counterparts, any one of which shall be deemed to be an original, and shall be distributed as follows:

| | |
|------------|--------|
| CONTRACTOR | 1 copy |
| OWNER | 1 copy |

26.0 CONSTRUCTION SCHEDULE

The CONTRACTOR shall submit to the OWNER a proposed construction schedule in accordance with Article 2.8 of the General Conditions, Section 13. The CONTRACTOR is required to schedule the Work so as to maintain a minimum amount of disturbance to the local residents and businesses.

27.0 MAJOR EQUIPMENT

Upon the Execution of the Contract Documents, the CONTRACTOR shall immediately place orders for all equipment and materials to be used on the Project. It is recommended that the CONTRACTOR place tentative orders, subject to cancellation for failure to complete the Contract Documents upon Notification of Award, for all equipment and materials with critical delivery dates.

28.0 SHOP DRAWINGS

Shop Drawings, descriptive literature and calculations as required covering all materials and equipment proposed for the job shall be submitted in three (3) copies by the CONTRACTOR to the ENGINEER for approval. The purpose of the Shop Drawings is to show the ENGINEER that the CONTRACTOR understands the design concept, demonstrating CONTRACTOR's understanding by indicating which equipment and material CONTRACTOR intends to furnish

and install, and by detailing the fabrication and installation CONTRACTOR intends to use.

All data submitted shall be complete, including type, size, number required, etc., as called for in the Contract, Project Plans, and Specifications. If material or equipment other than that specified is submitted for approval, the submittal data shall clearly show and point out any differences with adequate information to determine its equality.

The approval of the Shop Drawings by the ENGINEER shall not be construed as a complete check, but will indicate that the general method of construction is satisfactory. Approval of the Shop Drawings will not relieve the CONTRACTOR of the responsibility for any errors or omissions which may exist. The CONTRACTOR will be responsible for the satisfactory construction of all Work covered under this Contract. If deviations, discrepancies or conflicts between Shop Drawings and Specifications are discovered, either prior to or after Shop Drawing submittals are processed by the ENGINEER, the Design Drawings and Specifications shall control and shall be followed.

All data shall be submitted in strict accordance with the following procedures:

- A. Submit to the ENGINEER within fifteen (15) days after the Notice of Award.
- B. Submittals shall be made in groups of items which are related to facilitate cross checking and coordination.
- C. Each submittal shall be accompanied by a letter giving the CONTRACTOR's name, the Project name and an itemized list of the submittal data.

Should this procedure not be followed, the CONTRACTOR shall make no claim for loss of time or money as a result of delay in receiving approved submittal data. Material fabricated or equipment delivered to the site before the approved submittals have been returned to the CONTRACTOR shall be subject to rejection by the ENGINEER.

OWNER shall review each submittal and provide written acceptance or rejection within ten (10) working days after receipt.

29.0 WORK GUARANTEE

The CONTRACTOR shall guarantee in writing all work constructed under this Contract against defective materials and workmanship as follows:

All items of Work shall be guaranteed for a period of one (1) year, unless stated otherwise in these Specifications.

The Performance Bond shall guarantee claims for damages due to the workmanship for a period of one (1) year. The Guarantee Period begins on the date of Final Acceptance of the Work as determined by the OWNER. All corrective work satisfying the Guarantee Periods shall be accomplished at no cost to the OWNER. Emergency repairs performed by forces of or on the behalf of the OWNER will be billed to the CONTRACTOR. The Labor and Materials Payment Bond shall guarantee payment for all equipment, equipment rental, labor and materials for a period of one (1) year after Final Acceptance of the Work.

30.0 PRE-BID CONFERENCE

A non-mandatory Pre-Bid Conference will be held at **2:00 p.m. (MDT) on May 9, 2018**, at the Public Works Administration Office, 2600 N. Florida Ave., Alamogordo, NM.

SECTION 3 - BID SCHEDULE

BIDDER agrees to perform all of the work described in the specifications and shown on the plans for the following unit or lump sum prices. Prices should be written in numerals in the spaces provided.

**Public Works Bid No. 2018-003
Griggs Reservoir Outfall Structure Modifications and Storm Drain Improvements**

| ITEM NO. | ITEM DESCRIPTION | UNIT | EST. QTY. | UNIT PRICE | TOTAL AMOUNT |
|-----------------|---|-------------|------------------|-------------------|---------------------|
| 1 | Mobilization | LS | 1 | | |
| 2 | Clearing and Grubbing | LS | 1 | | |
| 3 | Project Removals | LS | 1 | | |
| 4 | Stormwater Pollution Prevention Plan (SWPPP) | LS | 1 | | |
| 5 | Traffic Control Management | LS | 1 | | |
| 6 | Construction Staking and Surveying | LS | 1 | | |
| 7 | Utility Allowance | LS | 1 | \$20,000 | \$20,000 |
| 8 | Diversion and Care of Storm Water Allowance | LS | 1 | \$8,000 | \$8,000 |
| 9 | Unclassified Excavation | CY | 38,200 | | |
| 10 | Embankment of Engineered Fill | CY | 4,200 | | |
| 11 | 4" HMA SP-IV Complete, Includes Subgrade Prep, Base Course, and Prime Coat, CIP | SY | 390 | | |
| 12 | Standard Curb and Gutter, Type II | LF | 20 | | |
| 13 | Concrete Sidewalk, 4" Thick | SY | 20 | | |
| 14 | Manhole, 8' Diameter | EA | 4 | | |
| 15 | 48" Storm Drain Pipe | LF | 662 | | |
| 16 | 54" Storm Drain Pipe | LF | 1,110 | | |
| 17 | 60" Storm Drain Pipe | LF | 1,104 | | |
| 18 | 60" Culvert Headwall | EA | 1 | | |
| 19 | Tee Manhole | EA | 3 | | |
| 20 | 1' Thick Wire Enclosed Rip Rap | CY | 81 | | |
| 21 | 6' X 6' Junction Box, Precast Concrete Structure | EA | 1 | | |

| | | | | | |
|----|---|----|-------|--|--|
| 22 | Channel Outlet, Includes Bleeder Pipe with Flap Gate, and Concrete Weir, CIP | LS | 1 | | |
| 23 | Griggs Concrete Intake Riser, Includes Foundation, Soil Cement Slab, CIP | LS | 1 | | |
| 24 | 30" X 30" Concrete Box Culvert | LF | 152 | | |
| 25 | Griggs Emergency Spillway, 5" Thick Reinforced Concrete, Including Cutoff Wall, CIP | CY | 200 | | |
| 26 | Remove and Replace Existing Asphalt Per City of Alamogordo Pavement Patch Detail | SY | 1,206 | | |

TOTAL BASE BID AMOUNT EXCLUDING NMGR \$ _____

NOTE: Gross receipts tax shall be paid with each pay request as it is submitted at the current tax rate for the City of Alamogordo, New Mexico (8.0%)

To the City of Alamogordo, New Mexico (hereinafter called "OWNER"), the undersigned, (hereinafter called "BIDDER"), in compliance with your invitation for bids for the construction of **Griggs Reservoir Outfall Structure Modifications and Storm Drain Improvements, Public Works Bid No. 2018-003**, having carefully examined the Contract Documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the Contract Documents, within the time set forth herein, and at the unit prices stated above. These prices are to cover all expenses incurred in performing the work required under the Contract Documents of which this Bid Schedule is a part. Quantities shown in this Bid Schedule are estimated and actual payment will be made on the basis of the unit bid prices for confirmed quantities as constructed.

BIDDER acknowledges receipt of the following addenda: _____

CALLOUT NOTICE ACKNOWLEDGMENT:

 Authorized Signature of Bidder

 Business Name of Bidder

 Authorized Signature of Bidder

Printed Name and Title of Authorized Signature

BIDDER'S New Mexico Contractor's License No. & Classification

Address

Telephone

Fax

(SEAL) If Bid Proposal is submitted by a corporation

SECTION 4 - SUBCONTRACTOR'S FAIR PRACTICE ACT COMPLIANCE

This Project is subject to the provisions of the State of New Mexico Subcontractor's Fair Practice Act.

| | |
|-------------------|--|
| Listing Threshold | <u>\$5,000.00 (Five-thousand dollars) for projects under \$1 million and one-half of one percent for projects over \$1 million</u> |
|-------------------|--|

For each category of the Project list all Subcontractors, sub-Subcontractors, other organizations, and/or persons which the BIDDER will be subcontracting, for an amount exceeding the listing threshold indicated above, the BIDDER shall define the subcontracting categories and list only one Subcontractor, sub-Subcontractor, other organization, and/or person for each category. The listing shall be in the format indicated on the following page, and shall be completed and submitted with the Bid.

No CONTRACTOR whose Bid is accepted shall sublet or subcontract any portion of the Work of the Project in an amount exceeding the threshold amount given above, where the original Bid amount did not designate a subcontract, unless 1) the CONTRACTOR received no bid for that category (note: the BIDDER must designate on the list of Subcontractors that "no bid was received"), or 2) the Work is pursuant to a change order that causes changes or deviations from the original Contract.

No CONTRACTOR whose Bid is accepted shall substitute any Subcontractor in place of the Subcontractor listed in the Bid except as provided for in the Subcontractor's Fair Practice Act.

**LIST OF PROJECT SUBCONTRACTORS FOR
AMOUNTS EXCEEDING THE LISTING THRESHOLD
(THIS FORM MUST BE FILLED OUT AND SUBMITTED WITH BID)**

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
NM Contractor's License No. _____
Type of Work _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
NM Contractor's License No. _____
Type of Work _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
NM Contractor's License No. _____
Type of Work _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
NM Contractor's License No. _____
Type of Work _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
NM Contractor's License No. _____
Type of Work _____

Signature of Authorized Representative for BIDDER _____ Date _____

Duplicate, complete, and submit additional sheets as required.

SECTION 5 - BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, _____
_____, as PRINCIPAL, and _____, as
SURETY are held and firmly bound unto The City of Alamogordo, New Mexico, hereinafter
called the OWNER, in the penal sum of _____ dollars,
(\$_____) lawful money of the United States, for the payment of which sum well and
truly to be made, we bind ourselves, our heirs, executors, administrator, successors, personal
representatives, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the PRINCIPAL has
submitted the accompanying Bid, dated _____, 20____, for

_____.

NOW, THEREFORE, if the PRINCIPAL shall not withdraw said Bid within the period therein
specified after the Opening of the same or, if no period be specified, within sixty (60) days after
the said Opening, and shall within the period specified therefore, or if no period be specified,
within fifteen (15) days after the prescribed forms are presented to PRINCIPAL for signature,
enter into a written Contract with the OWNER in accordance with the Bid as accepted, and give
bond with good and sufficient surety or sureties, as may be required, for the faithful performance
and proper fulfillment of such Contract, or in the event of the withdrawal of said Bid within the
period specified, or the failure to enter into such Contract and give such bond within the time
specified, the PRINCIPAL shall pay the OWNER the difference between the amount specified in
said Bid and the amount for which the OWNER may procure the required Work or supplies or
both, if the latter be in excess of the former, then the above obligation shall be void and of no
effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

[Individual PRINCIPAL] [SEAL]

[Business Address]

[Partnership] [SEAL]

[Business Address]

Attest: _____

By: _____
[Corporate PRINCIPAL]

[Business Address]

By: _____ Affix
Corporate Seal

Attest: _____

[Corporate SURETY]

By: _____ Affix
Corporate Seal
Countersigned

By: _____

Attorney-in-Fact¹, State of _____

¹Power-of-attorney for person signing for Surety Company must be attached to bond and must indicate availability for service in the State of New Mexico and a current mailing address.

SECTION 6 - STATEMENT OF BIDDER'S QUALIFICATIONS

(TO BE SUBMITTED BY THE BIDDER AND INCLUDED WITH BID)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The BIDDER may submit additional information.

1. Name of Bidder:
Current City of Alamogordo Business Registration Number:
N.M. Contractor's License Number:
2. Permanent main office address.
3. When organized?
4. If a corporation, where and when incorporated?
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. On a separate sheet, list active and completed projects similar in nature to this project for the past 3 years. Indicate name of project, and name, address, email and phone number of project owner/client. Supply the scheduled or actual completion dates, contract amounts, progress percentage completed, (Must have at least one project completed).
7. General trade of work performed by your company.
8. Have you ever defaulted on a contract? If so, where and why?
9. List your major equipment available for this contract.
10. Background and experience of the principal members of your organization, including the officers.
11. Credit available: \$_____.
12. Give bank reference:
Name:
Address:
Contact person:
Telephone number:
13. You may be required upon request, to furnish a detailed audited financial statement with name and address of firm preparing the statement and any other information that may be required by the OWNER.
14. The undersigned hereby authorizes any person, firm, or corporation to furnish any information requested by the OWNER in verification of the recitals comprising this statement of Bidder's Qualifications. This _____ day of

_____, 20____, dated at
_____.

Name of Bidder

By: _____

Title: _____

State of _____)
County of _____)ss.

_____, the _____ of
Name Position

_____ being duly sworn,
Company Name

deposes and says that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My Commission expires _____, 20_____

SECTION 7 - CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, 13-1-191.1 (2006), any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)

SECTION 8 - CONTRACT AGREEMENT

This AGREEMENT is dated as of the ____ day of _____ in the year **2018** by and between the City of Alamogordo, a New Mexico municipal corporation ("OWNER") and _____ ("CONTRACTOR").

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

ARTICLE 1 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire AGREEMENT between OWNER and CONTRACTOR concerning the work consist of the following:

- This AGREEMENT.
- Exhibits to this AGREEMENT.
- All required Bonds.
- Notice of Award.
- Conditions of the Contract (General, Supplementary, and Other Conditions).
- Project Specifications.
- Drawings with each sheet bearing the following general title:

**GRIGGS RESERVOIR OUTFALL STRUCTURE
MODIFICATIONS AND STORM DRAIN IMPROVEMENTS
PUBLIC WORKS BID NO. 2018-003**

- Notice to Proceed.
- Bid Documents and CONTRACTOR'S ***Bid Schedule***
- The Certificate of Insurance.
- All Addenda Issued Prior to, and all Modifications Issued after, Execution of this AGREEMENT.

These documents form the Contract, and all are as fully a part of the Contract, as if attached to this AGREEMENT, or repeated herein.

There are no Contract Documents other than those listed above in the Article 1. The Contract Documents may only be amended, modified or supplemented as provided in Section 13, General Conditions.

ARTICLE 2 WORK

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

**GRIGGS RESERVOIR OUTFALL STRUCTURE
MODIFICATIONS AND STORM DRAIN IMPROVEMENTS
PUBLIC WORKS BID NO. 2018-003**

consisting of the following: See attached ***Exhibit A***.

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The date of commencement of the Work is the date established in the NOTICE TO PROCEED AS ISSUED BY THE OWNER. Substantial Completion shall be achieved not later than **one hundred fifty (150) calendar days**, after the date of written "Notice to Proceed", except as hereafter extended by valid written Change Order, by the OWNER. Final Completion shall be achieved not later than **thirty (30) calendar days** after the date of Substantial Completion.

Should the CONTRACTOR neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the CONTRACTOR agrees, in partial consideration for the award of this Contract, to pay to the OWNER the amount of **One Thousand-Five Hundred Dollars (\$1,500.00)** per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4 CONTRACT PRICE

OWNER shall pay CONTRACTOR in current funds for performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Price determined as follows:

See CONTRACTOR'S ***Bid Schedule***, attached hereto as ***Exhibit B*** and incorporated by reference.

ARTICLE 5 PROGRESS PAYMENTS

Based upon Applications for Payment submitted in accordance with Article 14 of the General Conditions, the OWNER shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following receipt by the OWNER, of the undisputed Application, for Payment, one hundred percent (100%) of the portion of the Contract Price properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Price properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the OWNER; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents, which shall be paid in accordance in Article 6 of this Contract.

Valid, undisputed payments, due and unpaid, under the Contract Documents shall bear interest from the date payment is due, at the legal rate established by Laws of 2001, Chapter 68, Section 5. Section 13-4-28, NMSA 1978.

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire undisputed, unpaid balance of the Contract Price, shall be paid by the OWNER to the CONTRACTOR within ten (10) days after notification of the OWNER, by the Architect/Engineer that all incomplete and unacceptable Work that was noted during the Substantial Completion Inspection, and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed, and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the CONTRACTOR shall provide to the OWNER a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations:

CONTRACTOR has studied and become familiar with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions as provided in Section 13, General Conditions, and accepts the determination of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 13, General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for carefully locating said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data with respect to said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 13, General Conditions.

CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

CONTRACTOR has given OWNER's Representative all conflicts, errors or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by OWNER's Representative is acceptable to CONTRACTOR.

ARTICLE 8 GENERAL AND SPECIAL PROVISIONS

The OWNER's Representative is Bob Johnson, Engineering Manager for the City of Alamogordo, New Mexico, who is hereinafter called OWNER's Representative and who is to act as OWNER's Representative, assume all duties and responsibilities and have the rights and authority assigned to OWNER's Representative in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

This AGREEMENT shall be governed exclusively by the provisions hereof, and by the laws of the State of New Mexico, as the same from time to time exist.

Terms used in this AGREEMENT, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions.

As between the parties to this AGREEMENT: As to all acts or failures to act by either party to this AGREEMENT, any applicable statute of limitations shall commence to run and any alleged cause of

action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the OWNER's approval of the Final Certificate of Payment.

The CONTRACTOR shall hold harmless and indemnify the OWNER against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the CONTRACTOR.

This AGREEMENT shall not become effective until it is signed by all parties which are required to sign this AGREEMENT.

The CONTRACTOR and his agents and employees are independent CONTRACTORS, and are not employees of the City of Alamogordo. The CONTRACTOR and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Alamogordo, as a result of this AGREEMENT.

The CONTRACTOR, upon final payment of the amounts due under this AGREEMENT, releases the OWNER, his officers and employees, and the City of Alamogordo from all liabilities and obligations arising from or under this AGREEMENT, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the CONTRACTOR may incur.

The CONTRACTOR agrees not to purport to bind the City of Alamogordo to any obligation not assumed herein by the City of Alamogordo unless the CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

Notices

All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as follows:

THE OWNER:
City of Alamogordo
Public Works Department
2600 N. Florida Ave.
Alamogordo, NM 88310

THE CONTRACTOR:

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as here in above provided.

Gender, Singular/Plural. Words of any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

Captions and Section Headings. The captions and section headings contained in this AGREEMENT are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this AGREEMENT.

Certificates and Documents Incorporated. All certificates and documentation required by the provisions of this AGREEMENT shall be attached to this AGREEMENT at the time of Execution and are hereby incorporated by reference as though set forth in full in this AGREEMENT to the extent they are consistent with its conditions and terms.

Severability. If any clause or provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby.

Waiver. No provision of this AGREEMENT shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be accorded with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Entire AGREEMENT. This AGREEMENT represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This AGREEMENT incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this AGREEMENT, and all such conditions, understandings, and agreements have been merged into this written AGREEMENT. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written AGREEMENT.

Interchangeable Terms. For purposes of all provisions within this AGREEMENT and all attachments hereto, the terms "AGREEMENT" and "Contract" shall have the same meaning and shall be interchangeable.

Words and Phrases. Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

Contractor's Compliance. Contractor will comply with any and all applicable state, federal and local laws, ordinances, regulations and codes, including, but not limited to, Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3), Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60), the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11625, 12432 and 12138 (Minority/Women's Business Enterprises) as supplemented in 24 CFR 85.36(e), the Lead Based Paint Poisoning Prevention Act (24 CFR part 35), the Clean Air Act (42 U.S.C., Section 306), the Clean Water Act (33 U.S.C., Section 508), Environmental Protection Agency regulations at 48 CFR, part 15, and rules regarding conflict of interest as provided in 24 CFR 85.36 and OMB Circular 110.

Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1 through 30-24-3, NMSA 1978, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violations of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

A potential CONTRACTOR, or the CONTRACTOR, agrees to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If CONTRACTOR fails to comply with the Worker's Compensation Act, and applicable rules when required to do so, the contract may be canceled effective immediately.

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

IN WITNESS WHEREOF, OWNER and CONTRACTOR have Executed two copies of this AGREEMENT. One counterpart each has been delivered to CONTRACTOR and OWNER's Representative. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by OWNER's Representative on their behalf.

CONTRACTOR

By: _____

NM Taxpayer Identification Number:
Federal Taxpayer Identification Number:

OWNER
CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Margaret Paluch, City Manager

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

EXHIBIT A

The work will consist of earthwork, construction of a new storm drain system, and construction of a new spillway and riser outlet.

SECTION 9 - PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, *[Insert the name or legal title of the CONTRACTOR]*
_____ as Principal,
herein after called the CONTRACTOR, and *[Insert the legal title of the surety and address]*

_____ a corporation organized and existing under and
by virtue of the laws of the State of _____ and
authorized to do business in the State of New Mexico, hereinafter called the Surety, are held
and firmly bound unto *[Insert the name or legal title and address of the OWNER]*

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

WHEREAS, CONTRACTOR has by written agreement dated
_____, _____, entered into a contract described as follows:

_____ which contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if CONTRACTOR shall
faithfully perform and complete said Contract according to its terms and comply with all
requirements of law, then this obligation shall be null and void; otherwise it shall remain in full
force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

Whenever the CONTRACTOR shall be, and shall be declared by the OWNER to be, in default
under the said Contract, the OWNER having performed its obligations hereunder, the Surety
may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. At OWNER's option, obtain a bid or bids for submission to the OWNER for completing
said Contract in accordance with its terms and conditions and, upon determination by the
OWNER and Surety of the lowest responsible BIDDER, arrange for a contract between such

BIDDER and the OWNER and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price", as used in this paragraph shall mean the total amount payable by the OWNER to the CONTRACTOR under the Contract and any amendments thereto less the amount previously paid by the OWNER to the CONTRACTOR.

The Surety acknowledges that said Contract may contain express guarantees and agrees that said guarantees, if any, are covered by the Surety's obligation hereunder.

Right of action with respect to any express guarantees in the Contract shall accrue from the date of completion and formal acceptance of the Work under the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or its successors or assigns.

SIGNED AND SEALED _____, _____.

Contractor-Principal]

In presence of:

By: _____

Title: _____ [Surety]

Approved as to form:

By: _____
Attorney for the OWNER

Title: _____

\
Countersigned:

Surety's Authorized New Mexico Agent for Service

SECTION 10 - LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, *[Insert the name or legal title and address of the CONTRACTOR]*

_____, as PRINCIPAL, hereinafter called the CONTRACTOR, and *[Insert the legal title of the surety and address]*

_____, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, hereinafter called the Surety, as held and firmly bound unto *[Insert the name or legal title and address of the OWNER]*

_____ as Obligee, hereinafter called the OWNER and supplier of labor, material or supplies as joint obligees, in the amount of _____ dollars (\$_____), for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 20____ entered into a contract described as follows:

which contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the CONTRACTOR shall pay as they become due all just claims for labor performed and materials and supplies furnished upon or for the Work under the Contract, whether said labor be performed and materials and supplies be furnished under the original Contract or any contract there-under, then this

obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

The right to sue on this bond accrues only to the OWNER and the parties to whom the right is granted pursuant to Section 13-4-1 et. seq., NMSA 1978 (1988 repl. pamp.) and New Mexico Law; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

SIGNED AND SEALED ON _____, _____

[CONTRACTOR - PRINCIPAL]

In presence of:

By _____

Title: _____

Approved as to form:

[Surety]

Attorney for the OWNER

By: _____

Title: _____

Countersigned:

Surety's Authorized New Mexico Agent for Service

This bond is issued simultaneously with performance bond in favor of OWNER and suppliers of labor, materials or supplies for the faithful performance of the Contract.

SECTION 11 - CERTIFICATE OF INSURANCE

**PLEASE ATTACH AN INSURANCE CERTIFICATE
FROM A NEW MEXICO LICENSED INSURANCE AGENT
PER THE GENERAL CONDITIONS, SECTION 13
ARTICLE 5**

SECTION 12 - WAGE RATES

APPLICABLE TO PROJECTS OVER \$60,000

| | | |
|--|-------|------|
| Hidalgo, Lincoln, Otero, | | |
| Roosevelt, Sierra, Socorro..\$ | 14.17 | 0.55 |
| Lea.....\$ | 13.74 | 0.68 |
| ELECTRICIAN (Including Traffic Signalization) | | |
| Catron, Chaves, Curry, | | |
| DeBaca, Eddy, Grant, | | |
| Hidalgo, Lincoln, Otero, | | |
| Roosevelt, Sierra, Socorro..\$ | 26.21 | 9.35 |
| Lea.....\$ | 24.90 | 8.56 |
| HIGHWAY/PARKING LOT STRIPING: Includes Highway Line/Parking Lot Line Striping and Line Striping Truck Driver.....\$ | | |
| | 15.93 | 0.35 |
| INSTALLER: (Guardrails, Handrails and Signs) | | |
| Catron, Chaves, Curry, | | |
| DeBaca, Eddy, Grant, | | |
| Hidalgo, Lincoln, Otero, | | |
| Roosevelt, Sierra, Socorro..\$ | 13.58 | 0.35 |
| Lea.....\$ | 14.62 | 0.30 |
| IRONWORKER, REINFORCING/REBAR | | |
| Catron, Chaves, Curry, | | |
| DeBaca, Eddy, Grant, | | |
| Hidalgo, Lincoln, Otero, | | |
| Roosevelt, Sierra, Socorro..\$ | 21.66 | 6.03 |
| Lea.....\$ | 21.77 | 6.03 |
| IRONWORKER, STRUCTURAL.....\$ | 21.77 | 6.03 |
| LABORER | | |
| Asphalt Raker.....\$ | 13.00 | 0.35 |
| Common or General | | |
| Catron, Chaves, Curry, | | |
| Hidalgo, Lincoln, Sierra, | | |
| Socorro.....\$ | 11.67 | 0.35 |
| DeBaca.....\$ | 11.33 | 0.35 |
| Eddy.....\$ | 11.78 | 0.35 |
| Grant.....\$ | 10.62 | 0.35 |
| Lea.....\$ | 11.61 | 0.35 |
| Luna, Roosevelt.....\$ | 12.56 | 0.35 |
| Otero.....\$ | 12.73 | 0.35 |
| Flagger/Cone Setter.....\$ | 12.56 | 0.35 |
| Grade Checker.....\$ | 16.18 | 1.60 |
| Mason Tender- | | |
| Brick/Cement/Concrete.....\$ | 11.39 | 0.79 |
| Pipelayer.....\$ | 19.28 | |
| Power/Air Tool Operator, | | |
| Includes Jack Hammer.....\$ | 13.91 | 0.86 |
| PAINTER (Brush, Roller, and Spray).....\$ | 15.41 | 0.44 |
| POWER EQUIPMENT OPERATOR: | | |

| | |
|--|------|
| Asphalt/Concrete Paver, Laydown Machine, and Plant..\$ 15.42 | 0.26 |
| Backhoe/Excavator/Trackhoe Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.\$ 19.92 | 0.26 |
| Eddy.....\$ 14.87 | 0.26 |
| Lea.....\$ 16.88 | 0.26 |
| Bobcat/Skid Loader.....\$ 18.06 | 0.26 |
| Broom.....\$ 15.48 | 0.26 |
| Bulldozer.....\$ 16.25 | 0.26 |
| Crusher.....\$ 16.53 | 0.26 |
| Distributor.....\$ 14.50 | 0.26 |
| Forklift.....\$ 17.16 | 0.26 |
| Grader/Blade.....\$ 18.02 | 0.26 |
| Loader (Front End).....\$ 16.12 | 0.26 |
| Mechanic Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$ 19.44 | 0.26 |
| Lea.....\$ 20.69 | 0.26 |
| Milling Machine.....\$ 16.59 | 0.26 |
| Oiler.....\$ 15.79 | 0.26 |
| Piledriver.....\$ 17.82 | 0.26 |
| Roller (Asphalt, Dirt, and Sheepsfoot) Catron, Chaves, Curry, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.\$ 15.86 | 0.26 |
| DeBaca.....\$ 14.19 | 0.75 |
| Lea.....\$ 17.41 | 0.26 |
| Scraper.....\$ 15.91 | 0.26 |
| Screed.....\$ 15.70 | 0.26 |
| Tractor.....\$ 15.40 | 0.26 |
| Trencher.....\$ 16.31 | 0.26 |

TRUCK DRIVER

| | |
|--|------|
| Distributor Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lea, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$ 13.81 | 0.26 |
| Eddy.....\$ 13.70 | 0.26 |
| Dump Truck Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$ 14.60 | 0.26 |
| Lea.....\$ 14.61 | 0.26 |
| Flatbed Truck Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, | |

| | | |
|-----------------------------|----------|------|
| Lincoln, Luna, Otero, | | |
| Sierra, Socorro..... | \$ 12.96 | 0.26 |
| Eddy..... | \$ 12.71 | 0.26 |
| Lea..... | \$ 13.05 | 0.26 |
| Roosevelt..... | \$ 13.26 | 0.26 |
| Pickup and Pilot Car | | |
| Catron, Chaves, Curry, | | |
| DeBaca, Grant, Hidalgo, | | |
| Lincoln, Luna, Otero, | | |
| Roosevelt, Sierra, Socorro. | \$ 12.70 | 0.26 |
| Eddy..... | \$ 12.60 | 0.26 |
| Lea..... | \$ 12.84 | 0.26 |
| Semi-Trailer Truck..... | \$ 16.58 | 0.26 |
| Tractor Haul Truck..... | \$ 14.00 | |
| Water Truck | | |
| Catron, Chaves, Curry, | | |
| DeBaca, Eddy, Grant, | | |
| Hidalgo, Lincoln, Luna, | | |
| Otero, Roosevelt, Sierra, | | |
| Socorro..... | \$ 14.39 | 0.26 |
| Lea..... | \$ 15.07 | 0.26 |

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage

determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



Wage Decision Approval Summary

1) Project Title: Griggs Reservoir Outfall Structure Modifications and Storm Drain Improvements
 Requested Date: 02/09/2018
 Approved Date: 02/12/2018
 Approved Wage Decision Number: OT-18-0207-A

Wage Decision Expiration Date for Bids: 06/12/2018

2) Physical Location of Jobsite for Project:
 Job Site Address: 2600 N. Florida Ave.
 Job Site City: Alamogordo
 Job Site County: Otero

3) Contracting Agency Name (Department or Bureau): City of Alamogordo
 Contracting Agency Contact's Name: Bob Johnson
 Contracting Agency Contact's Phone: (575) 439-4337 Ext.

4) Estimated Contract Award Date: 05/08/2018

5) Estimated total project cost: \$1,685,000.00
 a. Are any federal funds involved?: Yes - \$1,125,000.00
 b. Does this project involve a building?: No
 c. Is this part of a larger plan for construction on or appurtenant to the property that is subject to this project?: No
 d. Are there any other Public Works Wage Decisions related to this project?: No
 e. What is the ultimate purpose or functional use of the construction once it is completed?: Flood control

6) Classifications of Construction:

| Classification Type and Cost Total | Description |
|---|---|
| Highway/Utilities (A) Cost: \$1,685,000.00 | Project will consist of earthwork, construction of a new storm drain system, and construction of a new spillway and riser outlet. |

TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Effective January 1, 2018

| Trade Classification | Base Rate | Fringe Rate |
|----------------------------------|-----------|-------------|
| Bricklayer/Blocklayer/Stonemason | 23.52 | 8.84 |
| Carpenter/Lather | 24.00 | 9.97 |
| Cement Mason | 17.42 | 6.35 |
| Ironworker | 26.50 | 15.30 |
| Painter (Brush/Roller/Spray) | 16.75 | 6.28 |
| Plumber/Pipefitter | 28.95 | 12.23 |
| Electricians (outside) | | |
| Groundman | 22.36 | 11.56 |
| Equipment Operator | 32.08 | 14.09 |
| Lineman/Wireman or Tech | 37.75 | 15.57 |
| Cable Splicer | 41.53 | 16.56 |
| Laborers | | |
| Group I | 11.96 | 5.55 |
| Group II | 12.26 | 5.55 |
| Group III | 12.66 | 5.55 |
| Operators | | |
| Group I | 16.94 | 6.33 |
| Group II | 17.69 | 6.33 |
| Group III | 17.80 | 6.33 |
| Group IV | 17.88 | 6.33 |
| Group V | 18.00 | 6.33 |
| Group VI | 18.14 | 6.33 |
| Group VII | 18.52 | 6.33 |
| Group VIII | 18.75 | 6.33 |
| Group IX | 25.70 | 6.33 |
| Group X | 28.60 | 6.33 |
| Truck Drivers | | |
| Group I | 16.00 | 7.17 |
| Group II | 16.00 | 7.17 |
| Group III | 16.00 | 7.17 |
| Group IV | 16.00 | 7.17 |

NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the particular trade. Details are located in a PDF attachment at WWW.DWS.STATE.NM.US. Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.



PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all Contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All Sub-Contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only Contracting Agencies are allowed to close the project. Agents or Contractors are not allowed to close projects.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all Contractors, regardless of amount of work, to the Contracting Agency within 3 (three) days of award.
- Ensure that all Subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Submit weekly certified payroll bi-weekly to the Contracting Agency.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) are sent to the Contracting Agency.



STATE OF NEW MEXICO
NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS
Labor Relations Division
121 Tijeras Ave NE, Suite 3000
Albuquerque, NM 87102
www.dws.state.nm.us

- All Subcontractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.

Subcontractor

- Ensure that all Subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Submit weekly certified payroll bi-weekly to the General Contractor(s).
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All Subcontractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.

Additional Information

Reference material and forms may be found at New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at public.works@state.nm.us or call (505) 841-4400.

SECTION 13 - GENERAL CONDITIONS

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ARTICLE 1 DEFINITIONS AND TERMS

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

AGREEMENT - The written agreement which constitutes a contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are part of the AGREEMENT

Application for Payment - The form furnished by ENGINEER which is to be used by CONTRACTOR in requesting progress payments and a CONTRACTOR affidavit stating that progress payments theretofore received on account of the Work have been applied by CONTRACTOR to discharge in full all of CONTRACTOR's obligations reflected in prior Applications for Payment

ARCHITECT - The person or firm designated by OWNER, who may or may not be an employee, who is responsible for providing architectural services under this AGREEMENT

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

BIDDER - Any person, firm, or corporation submitting a responsive BID for the Work

Bonds - BID, performance and payment bonds, and other instruments of security furnished by CONTRACTOR or SUBCONTRACTOR and CONTRACTOR's or SUBCONTRACTOR's surety in accordance with the Contract Documents

Change Order - A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time issued after execution of the AGREEMENT

City Commission - The governing body of the City of Alamogordo

Contract Documents - The written AGREEMENT between the CONTRACTOR and the OWNER setting forth the obligations of the parties there under, including but not limited to the performance of the Work and the Basis of Payment. The Contract Documents include: the Advertisement for Bids, Addenda (whether issued prior to the opening of Bids or the execution of the Agreement), Instructions to BIDDERS, CONTRACTOR's Bid, the Performance Bonds and Labor and Payment Bond (for both CONTRACTOR and SUBCONTRACTOR, if applicable to SUBCONTRACTOR), the Certificate of Insurance, the Statement of BIDDER's Qualifications, the Campaign Contribution Disclosure Form, the Notice of Award, the Notice to Proceed, these General Conditions, the Contract Specifications, any Special Conditions, any referenced Specifications or Standards, Drawings and Plans, and all Modifications to the above, including Change Orders and extensions of Contract Time, all of which constitute one instrument

Contract Price - The total monies payable to CONTRACTOR under the Contract Documents

Contract Time - The time specified in the AGREEMENT for completion of the Project. This time may be defined as a specified fixed date or a given number of calendar days. The Contract Time may be amended by mutual written Agreement of OWNER, CONTRACTOR, and

FUNDING AGENCY to include authorized time extensions as the performance of the Contract requires.

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

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

DESIGNER - The person or firm designated by OWNER, who may or may not be an employee, who is responsible for providing engineering services

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 ENGINEER and are referred to in the Contract Documents

ENGINEER – The City of Alamogordo’s City Engineer or authorized representative.

Engineer of Record – Professional Engineer, licensed in the State of New Mexico, that stamps the design (plans). Can be either the City Engineer or a consultant

Field Order - A written order issued by ENGINEER which clarifies or interprets the Contract Documents in accordance with paragraph 9.3 or orders minor changes in the Work in accordance with paragraph 10.2

General Conditions - This document

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 in accordance with paragraph 9.3; 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

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 CONTRACTOR within the time specified

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 the obligations set forth in the Contract Documents

OWNER - The City of Alamogordo, New Mexico, a New Mexico municipal corporation. The term “City” may be used interchangeably with the term “OWNER”

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

Project Manager – The OWNER’s representative who is delegated the responsibility for administration of the PROJECT and who is the primary point of contact for the CONTRACTOR

Project Close Out Documents - Project Close Out Documents consist of as-built drawings of the Project; waiver of lien certificates from all Subcontractors, material suppliers, or service

companies involved in the construction of the project; affidavit of release of liens that the lien releases or waivers attached include all parties above and any others who have lien rights; consent of surety for final payment prior to release of final payment; CONTRACTOR's certificate of completion that Project is complete in conformance with the Contract Drawings and specifications; written warranty (one year period) in accordance with Article 13.1 of these General Conditions

Public Works Inspector - An authorized representative of ENGINEER who is assigned to inspect the technical aspects of the Project or any part thereof

Reference Specifications, Test Methods, and Applicable Codes - All standard specifications and test methods of any society, association, or organization referred to herein are hereby made a part of these Contract Documents the same as if written in full. (Any reference to a paragraph or subparagraph within an article or section shall include all general provisions of the article or section to which reference is made.) References to such standards refer to the latest published issues as of the date of the Invitation to Bid, unless otherwise specified. References to local or state codes and laws shall mean the latest adopted and published codes as of the date of the Invitation to Bid, unless otherwise specified

Service Connections - Service Connections shall be construed to mean all or any portion of the pipe, conduit, cable, or duct which connects a utility main or distribution line to a building, home, residence, or property

Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by CONTRACTOR, a SUBCONTRACTOR, manufacturer, supplier, or distributor which have been approved by ENGINEER and which illustrate the equipment, material, or some portion of the Work

Special Conditions - Conditions which modify any article or paragraph of these General Conditions

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

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

Substantial Completion - Date, as certified by ENGINEER, when construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or a specified part thereof 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 14.13.

Utility - Overhead or underground wires, pipes, conduits, ducts, or structures, operated and maintained in or across a public right-of-way or easement or private easement operated and maintained to supply such commodities as water, gas, power, telephone, cable television, or sewer.

- 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, incidentals, and the furnishing and installation thereof

ARTICLE 2 PRELIMINARY MATTERS

Execution of AGREEMENT

2.1. At least two (2) counterparts of the Agreement and such other Contract Documents as are required to be executed will be executed and delivered by CONTRACTOR to OWNER within ten (10) days of the Notice of Award; and OWNER will execute and deliver one counterpart to CONTRACTOR within ten (10) days of receipt of the executed Agreement from CONTRACTOR.

Delivery of Bonds and Insurance

2.2. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and Certificates of Insurance as CONTRACTOR and SUBCONTRACTORS may be required to furnish in accordance with Article 5 of these General Conditions.

Copies of Documents

2.3. OWNER shall furnish to CONTRACTOR one (1) complete set of Contract

CONTRACTOR's Pre-Start Representations

2.4. CONTRACTOR represents that CONTRACTOR is familiar with and assumes full responsibility for becoming familiar with the nature and extent of the Contract Documents, Work and 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. CONTRACTOR represents that CONTRACTOR has correlated CONTRACTOR's study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that CONTRACTOR has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications, that CONTRACTOR has made such additional surveys and investigations as CONTRACTOR deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents, and that CONTRACTOR has correlated the results of all such data with the requirements of the Contract Documents.

Commencement of Contract Time; Notice to Proceed

2.5. The Contract Time will commence to run on the day indicated in a written Notice to Proceed is given, on the day indicated in the Notice to Proceed is issued by the OWNER.

A Notice to Proceed may be given at any time within 30 days after the day on which OWNER delivers the executed Agreement to CONTRACTOR.

Starting the Project

2.6. CONTRACTOR may start to perform the WORK ONLY AFTER RECEIVING A WRITTEN Notice to Proceed.

Before Starting Construction

2.7. 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 check and verify all applicable field measurements. CONTRACTOR shall at once report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover; however, CONTRACTOR shall not be liable to OWNER for failure to discover any conflict, error, or discrepancy in the Drawings or Specifications.

2.8. The CONTRACTOR, within twenty-one (21) calendar days after being Awarded the Contract unless agreed otherwise by the OWNER, shall prepare and submit for the ENGINEER's approval, a CONTRACTOR's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be approved by CONTRACTOR's sureties, if any, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule may be significantly modified only upon prior written agreement of the CONTRACTOR and its sureties, if any, and the ENGINEER. CONTRACTOR shall conform to the most recently approved schedules and shall not be entitled to an extension of the Contract Time or an increase in the Contract Price for the time required to obtain any Surety's approval.

2.9. Before starting the Work at the site, CONTRACTOR shall furnish OWNER certificates of insurance as required by Article 5 of these General Conditions. Within twenty (20) days after delivery of the executed Agreement by OWNER to CONTRACTOR, but before starting the Work at the site, a conference will be held to review the above schedules; to establish procedures for the handling of Shop Drawings and other submissions and the processing of Applications for Payment; and to establish a working understanding between the parties as to the Project. The conference will be attended by the OWNER, ENGINEER, and CONTRACTOR.

ARTICLE 3 CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS

3.1. The parties intend that the Specifications and Drawings 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 Contract 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, CONTRACTOR shall call it to ENGINEER's attention in writing at once and before proceeding with the Work affected thereby; however, CONTRACTOR shall not be liable to OWNER for 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, Contract Modification(s), Addenda, 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 Contract Documents 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.

Reference to Standard Specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the most current Standard Specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated.

ARTICLE 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands

4.1. 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 any other lands designated for use by 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 furnishing these lands or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 12 of these General Conditions. CONTRACTOR shall provide for any additional lands and access that may be required for temporary construction facilities or storage of materials and equipment at their expense.

Physical Conditions-Surveys and Reports

4.2 The OWNER will, upon request, furnish to the CONTRACTOR copies of all relevant boundary surveys and other pertinent reports and material which are readily available in OWNER's office. OWNER has not made tests of subsurface conditions and makes no warranties or statements to CONTRACTOR as to the presence or absence of difficult excavation conditions.

Unforeseen Physical Conditions

4.3. CONTRACTOR shall promptly notify ENGINEER in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents.

ENGINEER will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. ENGINEER shall obtain any necessary additional surveys and tests and furnish copies to CONTRACTOR. If appropriate, a Change Order shall be issued incorporating the necessary revisions.

The CONTRACTOR is responsible for locating and protecting underground and aerial utilities and constructions.

Reference Points

4.4. ENGINEER shall provide engineering surveys for construction to establish reference points which, in OWNER's judgment, are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for surveying and laying out the Work (unless otherwise agreed) and shall protect and preserve the established reference points. CONTRACTOR shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

Physical Conditions - Underground Facilities

4.5. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities are based on information and data furnished to OWNER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly agreed:

4.5.1. OWNER shall not be responsible for the accuracy or completeness of any such information or data; and,

4.5.2. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof, for repairing any damage thereto resulting from the Work, and for the cost; all of which will be considered as having been included in the Contract Price.

4.6. Not Shown or Indicated: If an Underground Facility is uncovered or revealed which was not shown or indicated in the Contract Documents and of which CONTRACTOR could not reasonably have been expected to be aware, CONTRACTOR shall promptly identify the owner of such Underground Facility and give written notice thereof to OWNER. OWNER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect the new condition, and the Contract Documents will be amended or supplemented to the extent necessary. During the interim, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. If the parties are unable to agree as to the amount or length of the appropriate adjustment, CONTRACTOR may make a claim therefor as provided in this Agreement.

ARTICLE 5 BONDS AND INSURANCE

Performance, Payment, and Other Bonds

5.1. CONTRACTOR and CONTRACTOR's SUBCONTRACTORS [if Subcontractors' contract for work to be performed on the Project is one hundred twenty-five thousand dollars (\$125,000) or more] shall furnish performance and payment Bonds as security for the faithful performance

of this Contract and for payment of all the CONTRACTOR's and CONTRACTOR's SUBCONTRACTORS' obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price and shall be in a form acceptable to OWNER and issued by sureties which are licensed to conduct business in the State of New Mexico and which are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U. S. Treasury Department. The Performance Bond shall include coverage for the Guarantee Period. Notwithstanding the obligation of any other party, person or entity to notify CONTRACTOR's and CONTRACTOR's Subcontractors' sureties, CONTRACTOR and CONTRACTOR's Subcontractors shall give immediate written notice to its sureties of any change in the Contract Sum, Contract Time, Scope of Work or any other event for which failure to give said sureties notice would operate to discharge a surety's liability. The Surety on the performance bond shall furnish a waiver by which it consents to progress or partial payments to the CONTRACTOR in accordance with this Contract. Surety shall further agree that such payment 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 Subcontractor or CONTRACTOR'S or Subcontractors' sureties such damages as the OWNER may sustain by reason of any deficiency in quantity of the materials with respect to which a progress payment was made.

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

Insurance Requirements

5.2. Until final acceptance by the OWNER of the Work, the CONTRACTOR shall procure and maintain at CONTRACTOR's own expense insurance of the kinds and in the amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the Contract, whether performed by the CONTRACTOR, CONTRACTOR's agents or employees or by Subcontractors. All insurance provided shall remain in full force and effect for the entire period of the Work, up to and including final acceptance, and the removal of all equipment and employees, agents and SUBCONTRACTORS there from.

I. Public Liability and Automobile Liability Insurance

- A. General Liability:** Bodily Injury Liability and Property Damage Liability insurance applicable in full to the subject project shall be provided in the following minimum amounts:

Bodily Injury Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

Property Damage Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

1. The policy to provide this insurance is to be written on a Comprehensive General Liability form which must include the following:

- a. Coverage for liability arising out of the operation of independent Contractors.
- b. Completed Operations Coverage.
- c. Attachment of the Broad Form Comprehensive General Liability Endorsement.

2. In the event that any use of explosives is a required part of the Contract, the CONTRACTOR's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.

3. In the event that any form of work next to an existing building or structure is a required part of the Contract, the CONTRACTOR's insurance must include coverage for injury to or destruction of property arising out of:

The collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof.

4. Coverage must be included for injury to or destruction of any property arising out of injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by or occurs during the use of mechanical equipment for the purpose of excavating, digging or drilling, or to injury to or destruction of property at any time resulting there from.

B. Automobile Liability Insurance coverage for the CONTRACTOR (whether included in the policy providing General Liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned and hired cars. The limits of liability for Automobile Liability insurance shall be provided in the following amounts:

Bodily Injury Liability:

\$500,000 each person

\$1,000,000 each occurrence

Property Damage Liability:

\$1,000,000 each occurrence

II. Workers' Compensation Insurance

The CONTRACTOR shall also carry Workers' Compensation Insurance or otherwise fully comply with the provisions of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

III. Owners' Protective Liability Insurance

The CONTRACTOR shall purchase Standard Form Owners' Protective Liability insurance naming the OWNER as the name insured, with limits of liability applicable in full to the subject project as follows:

Bodily Injury Liability:

\$500,000 each occurrence

Property Damage Liability:

\$100,000 each occurrence

Property Damage and Bodily Injury Combined:

\$1,000,000 aggregate

IV. Certificate of Insurance

The CONTRACTOR being Awarded the Contract shall furnish evidence of CONTRACTOR's insurance coverage by a Certificate of Insurance executed on a form acceptable to the OWNER, to be made a part of the Contract and included with the Contract Documents prior to signing the Contract. Such certificate shall indicate compliance with these specifications and shall certify that the coverage shall not be changed, canceled or allowed to lapse without giving the OWNER thirty (30) days written notice. Also, a Certificate of Insurance shall be furnished to the OWNER on renewal of a policy or policies as necessary during the terms of the Contract. The OWNER shall not issue a Notice to Proceed until such time as the above requirements have been met.

V. Umbrella Coverage

The insurance limits cited in the above paragraphs are minimum limits. This specification is in no way intended to define what constitutes adequate insurance coverage for the individual CONTRACTOR. The OWNER will recognize excess coverage (Umbrella) as meeting the requirements of Subsection I of this Section should such insurance otherwise meet all the requirements of such Subsection.

VI. Optimal Insurance

The CONTRACTOR shall procure and maintain, when required by the OWNER, forms and types of Bailee insurance such as, but not limited to, Builder's Risk Insurance, which should include, but is not limited to, theft, vandalism, weather conditions and acts of God, CONTRACTOR's Equipment Insurance, Rigger's Liability Property Insurance, etc. in amounts necessary to protect the OWNER against claims, losses and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the CONTRACTOR, including property of others being installed, erected or worked upon by the CONTRACTOR, CONTRACTOR's agents or Subcontractors.

VII. Railroad Insurance

In the event that railroad property is affected by the subject Contract, the CONTRACTOR is advised that, in addition to the above requirements, CONTRACTOR shall be required to furnish a Railroad Protective Liability policy in the name of the railroad company involved. In addition, on those rails that are used by the National Railroad Passenger Corporation (NRPC), the CONTRACTOR will also obtain a Railroad Protective Liability policy in the name of NRPC.

The limits of liability for the Railroad Protective Liability policy (or policies) must be negotiated with the railroad company on a hazard and risk basis. In no event will the limits exceed the following:

Bodily Injury Liability, Property Damage Liability:
\$2,000,000 each occurrence

Liability and Physical Damage to Property:
\$6,000,000 aggregate

The limits of liability stated above apply to the coverage as set forth in the Railroad Protective Liability Endorsement Form, subject to the terms, conditions and exclusions found in the Form.

The policy must afford coverage as provided for in the standard Railroad Protective Liability Endorsement (AASHTO Form).

Additional Bonds and Insurance

5.3. 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 paragraphs 6.7 and 6.7.1).

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

Registration

6.1 CONTRACTOR must be registered with the Industrial Division of the Department of Labor.

Supervision and Superintendence

6.2. CONTRACTOR shall supervise and direct the Work efficiently and with CONTRACTOR's best skill and attention. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction; but shall not be solely responsible for the negligence of others in the design or selection of a specific mean, 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.

6.3. CONTRACTOR shall keep on the Work at all times during its progress a competent resident Superintendent, who shall not be replaced without written notice to ENGINEER (written notice only, NOT consent) except under extraordinary circumstances. The Superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials, and Equipment

6.4. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site.

6.5. 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.

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

6.7. 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 or directed by the ENGINEER.

6.7.1. CONTRACTOR shall assign to OWNER all express and implied warranties and Contract rights for materials and equipment installed in the Project and for which OWNER has paid CONTRACTOR.

Substitute Materials or Equipment

6.8. 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, CONTRACTOR shall, prior to the conference called for by paragraph 2.9, make written application to ENGINEER 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 ENGINEER, who will be the judge of equality and who may require CONTRACTOR to furnish such other data about the proposed substitute as ENGINEER 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.

Concerning Subcontractors

6.9. 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 or ENGINEER 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 or ENGINEER 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 CONTRACTOR 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 unless OWNER determines that there is good cause for doing so.

6.10. CONTRACTOR shall be fully responsible for all acts and omissions of CONTRACTOR's Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. 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.

6.11. 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. All work shall be performed by persons licensed to perform such work by New Mexico Construction Industries Division.

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

Patent Fees and Royalties

6.13. 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 and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents and shall defend all such claims in connection with any alleged infringement of such rights.

Permits

6.14. 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 CONTRACTOR's Bid. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall also pay all public utility charges.

Laws and Regulations

6.15. 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, CONTRACTOR shall give ENGINEER 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 ENGINEER, CONTRACTOR shall bear all costs arising there-from; 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.

Taxes

6.16. CONTRACTOR shall pay all New Mexico gross receipts, sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the law of the place where the Work is to be performed.

Use of Premises

6.17. CONTRACTOR shall confine CONTRACTOR's equipment, the storage of materials and equipment, and the operations of CONTRACTOR's 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.

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

Record Drawings

6.19. CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order and currently annotated to show all

changes made during the construction process. These shall be available to ENGINEER and shall be delivered in good condition to OWNER upon completion of the Project.

Safety and Protection

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

6.20.1. All employees on the Work and other persons who may be affected thereby;

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

6.20.3. Other property at the site 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.

6.20.4. All personal property that may be affected by the work.

The CONTRACTOR shall conduct construction 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. CONTRACTOR shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for its safety and protection. CONTRACTOR shall notify owners of adjacent utilities at least forty-eight (48) hours in advance when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in subparagraphs 18.4.1 and 18.4.2 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR, except for damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of DESIGNER or anyone employed by OWNER or anyone for whose acts OWNER 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 14.13 that Work is acceptable.

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

Emergencies

6.22. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER

or OWNER, is obligated to act, on self discretion, to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER 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 in an emergency which arose from causes beyond CONTRACTOR's control entitles an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR may make a claim as provided in Articles 11 and 12 of these General Conditions.

Shop Drawings and Samples

6.23. After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for approval, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), three copies (or, at ENGINEER'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 ENGINEER 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.

6.24. CONTRACTOR shall also submit to ENGINEER 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.

6.25. 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.

6.26. ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's 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 ENGINEER 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 ENGINEER on previous submissions. CONTRACTOR's stamp of approval on any Shop Drawing or sample shall constitute a representation to ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

6.27. 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 ENGINEER. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to ENGINEER.

6.28. ENGINEER's approval of Shop Drawings or samples shall not relieve CONTRACTOR from CONTRACTOR's responsibility for any deviations from the requirements of the Contract

Documents unless CONTRACTOR has in writing called ENGINEER's attention to such deviation at the time of submission and ENGINEER has given written approval to the specific deviation, nor shall any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

Cleanup

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

Indemnification

6.30. 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, provided 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 there from 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.

6.31. In any and all claims against OWNER or any of its agents or employees by any employees of CONTRACTOR, any 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 this Agreement 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 workmen's compensation acts, disability benefit acts, or other employee benefit acts.

6.32. The obligations of CONTRACTOR under this Agreement shall not extend to the liability of OWNER, OWNER's agents, or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications or (b) the giving of or the failure to give directions or instructions by OWNER, OWNER's agents, or employees provided such giving or failure to give is the primary cause of injury or damage.

Notice to Surety

6.33. In all cases involving changes in the Work, the CONTRACTOR shall be obligated to promptly notify its Sureties, if any, of any change in Contract Price, scope of the Work or Contract Time which might operate to discharge the Sureties if notice were not provided. No obligation to notify a Surety or actual notice to a Surety by any other person or party shall operate to relieve CONTRACTOR of its obligation to notify a Surety.

Documents, Records and Correspondence

6.34. The CONTRACTOR shall maintain the following documents and records and, upon request by the OWNER, shall promptly make the records or legible copies thereof available to OWNER: Bid estimates, site observation reports, material and equipment invoices, payment records, payroll records, approved shop drawings, job meeting minutes, daily reports, logs and diaries, and photographs pertaining to the Work. The CONTRACTOR shall furnish copies of all correspondence pertaining to the Work to the OWNER upon request.

ARTICLE 7 WORK BY OTHERS

7.1. OWNER may itself perform additional Work related to the Project or it may let other direct contracts therefore which shall contain General Conditions similar to these. CONTRACTOR shall afford the other contractors who are parties to such direct contracts (or OWNER, if performing the additional work directly) reasonable opportunity for the introduction and storage of materials and equipment and for 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 or results upon the work of any such other contractor (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER 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 CONTRACTOR's Work except as to defects and deficiencies which may appear in the other work after the execution of CONTRACTOR's Work.

7.3. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of 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 additional expense or warrants an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 of these General Conditions.

7.5. Work by the CONTRACTOR and work by others shall be coordinated and expedited by the OWNER to prevent time delays and additional cost to the CONTRACTOR. Any extension of time and/or additional costs caused by other contractors may be claimed as provided in Articles 11 and 12 of these General Conditions.

ARTICLE 8 OWNER'S RESPONSIBILITIES

8.1. OWNER shall issue all official communications to CONTRACTOR through ENGINEER, in writing.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4.

8.5. In connection with OWNER's rights to request changes in the Work in accordance with Article 10 of these General Conditions, OWNER (especially in certain instances as provided in paragraph 10.4) is obligated to execute Change Orders.

8.6. OWNER's responsibility in respect of 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 13.11 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR.

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative

9.1. ENGINEER will be OWNER's representative during the construction period. For the purpose of inspecting and approving the WORK.

Visits to Site

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER shall exercise reasonable skill and diligence to ensure that the completed Work will conform to the Contract Documents.

Clarifications and Interpretations

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

Rejecting Defective Work

9.4. ENGINEER will have authority to disapprove or reject Work which is defective and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.7, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments

9.5. In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.28 inclusive.

9.6. In connection with ENGINEER's responsibilities as to Change Orders, see Articles 10, 11 and 12 of these General Conditions.

9.7. In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14 of these General Conditions.

Project Representation

9.8. The ENGINEER may designate a Project Representative to assist ENGINEER in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Project Representative and assistants will be as delegated by the ENGINEER.

Decisions on Disagreements

9.9. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there-under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time, unless ENGINEER advises CONTRACTOR that additional time is needed in which to ascertain more accurate data.

9.10. The rendering of a decision by ENGINEER pursuant to paragraph 9.9 with respect to any claim, dispute or other matter will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of that claim, dispute or other matter.

Limitations on ENGINEER's Responsibilities

9.11. Neither ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

9.12. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.13 or 9.14.

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

9.14. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

ARTICLE 10 CHANGES IN THE WORK

Change Order

10.1. Without invalidating the Agreement, OWNER may, at any time, after review and approval by the Funding Agency and prior to implementation, order additions, deletions or revisions in the Work; these will be authorized by written Change Orders. Upon receipt of a signed 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 may be made as provided in Article 11 or Article 12 of these General Conditions on the basis of a claim made by either party.

Field Order

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

10.3. Additional Work performed without authorization of a written and executed Change Order will not entitle CONTRACTOR to an increase in the Contract Price or to an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.22 and except as provided in paragraphs 10.2, 11.9 and 13.10.

10.4. OWNER shall execute appropriate Change Orders prepared by ENGINEER covering changes in the Work which are required by OWNER or which are required because of emergencies or as provided in Article 7 of these General Conditions or as provided in paragraph 11.9, or because of any other valid claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is recommended by ENGINEER and accepted by the OWNER.

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

10.6. CONTRACTOR shall not be entitled to receive damages or additional cost for delay reasonably caused by the OWNER, OWNER'S consultants, agents and employees. In such event, however, CONTRACTOR may be entitled to an extension of the Contract Time.

10.7. Changes in the Work which represent less than twenty-five percent (25%) of the value of the Work shall not be considered to change the scope of the Work provided that the operations and methods required to perform the change are not significantly different from those contemplated by the original Work.

ARTICLE 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 CONTRACTOR'S 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 but before the CONTRACTOR has incurred additional expenses except in the case of emergencies, under paragraph 6.22. Notice of the amount of the claim with supporting data and written explanation of the basis for the claim shall be delivered within seven (7) days of such occurrence unless ENGINEER 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. OWNER may grant CONTRACTOR an extension of the Contract Time for resolving a claim for adjustment but in no case shall CONTRACTOR be entitled to damages for delay.

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, plus a CONTRACTOR's Fee for supervision, overhead, bond, profit and any other general expenses, fee shall not exceed fifteen percent (15%) of the actual Cost of Work.

11.3.4. If the CONTRACTOR subcontracts all or part of the Work and the subcontract is to be paid on the basis of the Cost of Work plus a Fee, the Total Fee for the subcontracted Work and the CONTRACTOR'S Fee shall not exceed fifteen percent (15%) of the actual cost of Work, as determined in accordance with paragraphs 11.4 and 11.5, unless otherwise as determined or agreed to by OWNER. The Cost of Work and Fee shall be identified individually in the Change Order back-up provided to the OWNER by the CONTRACTOR, in a format acceptable to the OWNER.

Cost of the Work

11.4. 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 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, workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Employees shall include superintendents and foremen at the site. 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 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 CONTRACTOR 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. The Total Fee for Subcontractor's Fee and CONTRACTOR's Fee combined shall not exceed fifteen percent (15%) of the actual Cost of Work, unless otherwise determined or agreed to by OWNER. Fee includes compensation for supervision, overhead, bond, profit and any other general expenses. 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, lawyers, and accountants) employed for services specifically related to the Work to the extent authorized in advance by OWNER.

11.4.5. Supplemental costs including the following:

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

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

11.4.5.3. Rentals of all construction equipment and machinery and parts thereof, whether rented by CONTRACTOR or others in accordance with rental agreements approved by OWNER, and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof -- all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work; if rental is not timely ceased, OWNER shall incur no cost beyond that absolutely required for the Work.

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

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

11.4.5.6. Losses, damages and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of 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, CONTRACTOR shall be paid for the services a fee proportionate to that stated in paragraph 11.6.2.

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

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

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

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

11.5.4. Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same.

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

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

CONTRACTOR's Fee

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

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

11.6.2. An amount determined by the OWNER to be reasonable.

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

11.6.3. 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. The Total Fee for Subcontractor's Fee and Contractor's Fee combined shall not exceed fifteen percent (15%) of the actual Cost of Work, unless otherwise determined or agreed to by OWNER. Fee includes compensation for supervision, overhead, bond, profit and any other general expenses

11.7. The amount of credit to be allowed by CONTRACTOR to OWNER for any change in contract price which results in a net decrease in cost will be the amount of the actual net decrease plus an allowance for overhead and administration. 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 or decrease.

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

Cash Allowances

11.9. It is understood that CONTRACTOR has included in the Contract Price all cash allowances required by the Contract Documents and the CONTRACTOR shall cause the Work covered to be done by 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 CONTRACTOR deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

ARTICLE 12 CHANGE OF THE CONTRACT TIME

12.1. The Contract Time may only be changed by written approval from the OWNER via formal Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER within seven (7) days of the occurrence of the event giving rise to the claim for contract time extension and shall be accompanied by supporting data 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.

12.2. The Contract Time may be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if CONTRACTOR 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, weather conditions, or acts of God. If the CONTRACTOR has worked less than four (4) hours in a day, and is forced to suspend work due to weather conditions, CONTRACTOR shall receive credit for one (1) day. The CONTRACTOR shall deliver to the OWNER, a written request within seven (7) days of each occurrence, regarding the credit day(s). The OWNER shall make the final determination as to the validity of each request.

12.3. All time limits stated in the Contract Documents are of the essence of the Agreement. The conditions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party; except that CONTRACTOR shall be entitled only to an extension of the Contract Time, and not for other damages, resulting from OWNER's decision to delay the Work either prior to the time for commencement of the Work or during performance of the Work.

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

Warranty and Guarantee

13.1. CONTRACTOR warrants and guarantees to OWNER that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, will be free from faults or defects, and will be in accordance with the requirements of the Contract Documents and of any inspections, tests, or approvals referred to in paragraph 13.2. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals, shall be considered defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, equipment

and materials whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

Tests and Inspections

13.2. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by some public body, CONTRACTOR shall assume full responsibility therefore, shall pay all costs in connection therewith and shall furnish OWNER the required certificates of inspection, testing or approval.

Quality Assurance Materials Testing (Geotechnical)

13.3 A material testing laboratory shall be retained by the City for Quality Assurance testing. The frequency of the Quality Assurance testing shall be as determined by the OWNER. The CONTRACTOR shall notify the testing laboratory, the OWNER and the ENGINEER when ready for each Quality Assurance test and cooperate fully in making way for the laboratory technician to make the tests. If any Work fails to meet the standards specified, the CONTRACTOR shall correct such failures in a manner acceptable to the ENGINEER. The CONTRACTOR shall pay for the cost of all Quality Assurance retesting necessary due to failure to meet specification requirements on the initial Quality Assurance testing. If the CONTRACTOR requests the testing laboratory to obtain density tests and the area to be tested is not ready when the technician arrives at the job site, the CONTRACTOR shall pay for all trip charges or stand by time assessed. All cost for retesting, standby time and other charges associated with a failed QA test will be deducted from the amount due on the Contract.

13.4 CONTRACTOR shall be responsible for providing to the OWNER the Proctor, Gradation and Liquid Limits of the Sub-Grade material and Base Course material.

13.5 Material testing as referenced in this article is for the OWNER's Quality Assurance. The CONTRACTOR is responsible for Quality Control of material, process and method.

13.6. CONTRACTOR shall give OWNER, ENGINEER, INSPECTING AGENCY and GEOTECHNICAL TESTING LAB a minimum of twenty-four (24) hours notice of readiness of the Work for all inspections, tests or approvals. All requests for QA testing shall be made in writing or e-mail to the ENGINEER, OWNER AND Testing Laboratory and by phone to the testing laboratory. If any such Work required so to be inspected, tested or approved is covered without written approval of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation; and such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover such Work and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7. Neither observations by ENGINEER nor inspections, tests or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the requirements of the Contract Documents. Refer to Technical Specifications, Article 01-002.1, Section 4, Quality Assurance Materials Testing.

Access to Work

13.8. ENGINEER and ENGINEER'S representatives and other representatives of OWNER will have access to the Work at reasonable times. 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.

Uncovering Work

13.9. If any Work is covered contrary to the request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and the cover replaced in compliance with the Contract Documents at CONTRACTOR's expense.

13.10. If any Work has been covered which ENGINEER has not specifically requested to observe prior to its being covered or if ENGINEER considers it necessary or advisable that covered Work be inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover or otherwise make available for observation, inspection or testing as ENGINEER 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 CONTRACTOR makes a claim therefor as provided in Articles 11 and 12 of these General Conditions.

OWNER May Stop the Work

13.11. If the Work is defective or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, when an imminent hazard condition is known to exist, when the CONTRACTOR either delays in correcting or permits repeated occurrences of a hazardous condition, or if CONTRACTOR fails to make prompt payments to Subcontractors or for labor, materials or equipment, OWNER, after notification to the Funding Agency within 5 business days, 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. This authority to suspend Work does not relieve the CONTRACTOR of the legal responsibility for safety at the jobsite.

Correction or Removal of Defective Work

13.12. If required by ENGINEER prior to approval of final payment, CONTRACTOR shall promptly (as determined by ENGINEER), without cost to OWNER and as specified by ENGINEER, either correct any defective Work, whether or not fabricated, installed, or completed or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within a reasonable time as determined by ENGINEER, all as specified in a written notice from ENGINEER, 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 such correction, removal, or replacement of CONTRACTOR's defective Work.

One Year Correction Period

13.13. If, after the approval of final payment and prior to the expiration of one year after the date of FINAL ACCEPTANCE provided by letter by OWNER 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 non-defective 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 and all direct and indirect cost of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

Acceptance of Defective Work

13.14. The OWNER, may elect to accept defective work, instead of requiring correction or removal and replacement of the defective Work. 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. OWNER will reimburse funding agency accordingly.

Neglected Work by CONTRACTOR

13.15. If CONTRACTOR shall fail 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 OWNER may have, make good any deficiencies and the cost thereof, including compensation for additional professional services, shall be charged against CONTRACTOR if ENGINEER 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.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

Schedules

14.1. Prior to commencement of the Work, CONTRACTOR shall submit to OWNER a Project schedule and a final schedule of Shop Drawing submission. The schedule shall be approved in writing by CONTRACTOR's Sureties and shall be satisfactory in form and substance to OWNER.

Application for Progress Payment

14.2. No later than the first day of each month, CONTRACTOR shall submit to OWNER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as OWNER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a separate Materials On hand/Stored Summary with a signature line for the ENGINEER or representative, satisfactory to OWNER, as will establish OWNER's title to the material and equipment and protect OWNER's interest therein, including applicable insurance. ENGINEER's Construction Status Report will accompany each Application for Payment. **Each subsequent Application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR's obligations reflected in prior Applications for Payment.**

CONTRACTOR'S Warranty of Title

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

Review of Applications for Progress Payment

14.4. All Applications for Payment are subject to review and approval by the Funding Agency(s). OWNER will, within seven (7) days after receipt of each Application for Payment, accept as submitted the Application for Payment or return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. OWNER shall pay CONTRACTOR the amount recommended by ENGINEER, within forty-five (45) days after the Funding Agency(s) review and approval of the undisputed Application for Payment.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation) and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to OWNER free and clear of any Liens.

14.6. ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

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

14.7.1. The Work is defective, or completed Work has been damaged requiring correction or replacement,

14.7.2. Written claims have been made against OWNER in connection with the Work,

14.7.3. The Contract Price has been reduced because of Modifications,

14.7.4. OWNER has been required to correct defective Work or complete the Work in accordance with paragraph 13.9,

14.7.5. Of CONTRACTOR's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or

14.7.6. Of CONTRACTOR's failure to make payment to Subcontractors, or for labor, materials or equipment.

Substantial Completion

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall, in writing to OWNER, and in turn, the Funding Agency, at least 7 calendar days in advance, certify that the entire Work is substantially complete and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR, ENGINEER, and Funding Agency (unless waived in writing) shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving his reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion and acceptance. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment.

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

Partial Utilization

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

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Prior to the OWNER using that portion of work, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, ENGINEER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final acceptance and payment. Prior to issuing a certificate of Substantial Completion as to part of the Work, ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work, which shall become binding upon OWNER and CONTRACTOR at the time of issuing the definitive certificate of Substantial Completion as to that part of the Work unless OWNER and CONTRACTOR shall have otherwise agreed in writing and so informed ENGINEER. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.10.2. In lieu of the issuance of a certificate of Substantial Completion as to part of the Work, OWNER may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, OWNER and CONTRACTOR have agreed as to the division of responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

Final Inspection

14.11. Upon 7 calendar days advanced written notice from CONTRACTOR that the Work is complete, ENGINEER will make a final inspection with OWNER, CONTRACTOR, and Funding Agency (unless waived in writing) 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.

Final Application for Payment

14.12. After CONTRACTOR has completed all deficiency corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, warranty assignments, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.15), CONTRACTOR may make application for final payment following the procedure for progress

payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents (to include all Project Close Out Documents as defined in Article 12 of these General Conditions), and such other data and schedules as ENGINEER may reasonably require. CONTRACTOR shall also furnish an affidavit of CONTRACTOR to the effect that the labor, services, material and equipment charges have been satisfied in full; and that all payrolls, material and equipment bills, and other indebtedness connected with the Work have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment.

Final Payment and Acceptance

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection and ENGINEER's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents--ENGINEER is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of CONTRACTOR's obligations under the Contract Documents (to include all Project Close Out Documents as defined in Article 12 of these General Conditions), ENGINEER will, within seven (7) days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are satisfactory and complete in form and substance, OWNER shall, within forty-five (45) days after receipt thereof, pay CONTRACTOR the amount recommended by ENGINEER.

A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if: (1) the construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and (2) the following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

"Notice of Extended Payment Provision

This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment."

All construction contracts shall provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

A creditor shall not collect, enforce a security interest against, garnish or levy execution on those progress payments or other payments that are owed by an owner, contractor or

subcontractor to a person, or the owner's contractor's or subcontractor's surety, who has furnished labor or material pursuant to a construction contract.

When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed.

CONTRACTOR's Continuing Obligation

14.14. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the existence of an unresolved claim, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

Waiver of Claims

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

14.15.1. A waiver of all claims by OWNER against CONTRACTOR, except claims arising from defective Work appearing after final inspection pursuant to paragraph 14.11 or from any failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

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

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work

15.1. OWNER may, at any time and without cause, after notification to the Funding Agency, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed unless CONTRACTOR and OWNER agree otherwise. CONTRACTOR will be allowed an extension of the Contract Time directly attributable to any suspension if CONTRACTOR makes a claim therefor as provided in Article 12 of these General Conditions, but shall not be entitled to an increase in the Contract Price or to any sums in damages.

OWNER May Terminate

15.2. If CONTRACTOR is adjudged bankrupt or insolvent; makes a general assignment for the benefit of creditors; or if a trustee or receiver is appointed for CONTRACTOR or for any of

CONTRACTOR's property; or if CONTRACTOR files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; repeatedly fails to make prompt payments to Subcontractors for labor, materials, or equipment; disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction; disregards the authority of ENGINEER; or violates any provision of the Contract Documents, then OWNER may, after notification to the Funding Agency within 5 business days, without prejudice to any other right or remedy and after giving CONTRACTOR and CONTRACTOR's Surety seven days' written notice, terminate the services of CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR and make demand upon CONTRACTOR's Surety to finish the Work. If Surety fails to make satisfactory arrangements within twenty-one days for completion of the Work, OWNER may finish the Work by whatever means it 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 determined by OWNER and incorporated in a Change Order.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, said 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. If the OWNER, which is a public entity, makes a good faith determination that such action is in the best interests of the entity, OWNER may terminate the Work or the Project upon seven days' written notice to CONTRACTOR for any reason which is within the legitimate purview of OWNER.

If OWNER terminates the Work under this provision, CONTRACTOR shall be entitled to payment for all portions of the Work completed and materials on hand at the date of termination and for expenses reasonably resulting from termination.

15.4.1. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the OWNER, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this Contract does contain a clause providing for termination for convenience of the OWNER, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly.

CONTRACTOR May Stop Work or Terminate

15.5. 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 if OWNER fails to act on any Application for Payment within seven (7) days after it is submitted, or if OWNER fails to pay CONTRACTOR any sum approved by ENGINEER and Funding Agency

within forty-five (45) 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. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may, upon seven (7) days notice to OWNER, stop the Work until payment is made.

ARTICLE 16 FORMAL DISPUTE

16.1. Prior to seeking judicial relief in a court of law, and in addition and prior to arbitration, the interested parties shall endeavor to settle disputes by mediation under the requirements of Sections 13-4C-1 through 13-4C-11 NMSA 1978. Mediation shall commence within the time limits stipulated in the Act. Such time limits shall then be extended for arbitration by ten days (Chapter 63, Laws of 1992.)

16.2. All persons or entities whose interests or responsibilities in the dispute are substantial may be joined, and claims and disputes may be consolidated, in accordance with the law.

16.3. CONTRACTOR will carry on the Work and maintain the progress schedule during any dispute resolution proceedings, unless otherwise agreed by CONTRACTOR and OWNER in writing.

ARTICLE 17 MISCELLANEOUS

Giving Notice

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given on the date 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 three days after sent by certified mail, postage prepaid and return receipt requested, to the last business address known to the person who gives the notice.

Computation of Time

17.2. When any period of time is referred to in the Contract Documents by days, it shall be computed to include the first and the last day of such period.

General

17.3. All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

17.4. All Specifications, Drawings and copies thereof furnished by OWNER shall remain the property of OWNER. They shall not be used 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 on request upon completion of the Project.

17.5. The duties and obligations imposed by these General 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 14.3 and the rights and remedies available to OWNER there-under 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.

17.6. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other or of any of the other's employees or agents or others for whose acts the non-injured party 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.

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

Minimum Wages

17.8. 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 (1988 Repl.), and all amendments thereto, which provides in part that "the 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 advertised specifications."

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 or Subcontractor or by other persons doing or contracting to do the whole or part of the Work contemplated by the Contract shall be as set forth in the schedule of Minimum Wage Rates appearing in the State Wage Rates, 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 in a prominent and easily accessible place at the site of the work; and it is further provided that there may be withheld from the CONTRACTOR so much of accrued payments as may be considered necessary by the OWNER to pay to laborers and mechanics employed by the CONTRACTOR or Subcontractor on the Work, the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the Work and the rates of wages received by such laborers and mechanics and not refunded to the CONTRACTOR, Subcontractors, or their agents.

The attention of the CONTRACTOR and any Subcontractor performing work under this Contract is directed to Section 13-4-12 NMSA 1978 (1988 Repl.) 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 or Subcontractor to a trustee or a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to a CONTRACTOR or Subcontractor which reasonably 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) employment 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 or Subcontractor is not required by other federal, state, or local law to provide any of the foregoing or similar benefits."

However, the obligation of a CONTRACTOR or Subcontractor to make payment in accordance with the prevailing wage determinations of the State Labor Commissioner [Director of the Labor and Industrial Division of the Department of Labor], insofar as Section 13-4-11 NMSA 1978, or other sections or 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 (2a) above; or
- (3) The assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in (2b) above 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."

In the event it is found by the State Labor Commissioner 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 and CONTRACTOR's Subcontractor, if the violation involves the Subcontractor, 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 and CONTRACTOR's sureties shall be liable to the State of New Mexico for any excess costs occasioned thereby. Any party receiving notice of termination of a contract or subcontract under the provisions of this section may appeal the finding of the State Labor Commissioner as provided in the Public Works Minimum Wage Act.

There is no representation on the part of the OWNER that labor can be obtained at the hourly rates shown in the General Conditions. 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. The CONTRACTOR and any Subcontractor performing work under this

Contract shall submit one certified copy of weekly payrolls to the State Labor and Industrial Commission not later than five working days after close of any payroll period that occurs during the month of June. One certified copy of all payrolls shall be submitted to the ENGINEER not later than five (5) working days after the close of any payroll. The scale of wages must be posted by the CONTRACTOR at the project site. The weekly payrolls shall conform to the following:

- (1) Form and Content: Any particular form may be used for CONTRACTOR or Subcontractor payrolls, provided all payrolls contain the following information:
 - (a) The employee's full name, address, and social security number.
 - (i) The employee's full name and social security number need only appear on the first payroll on which employee's name appears.
 - (ii) The employee's address need be shown only on the first submitted payroll on which employee's name appears, unless a change of address necessitates an additional submittal to reflect the new address.
 - (b) The employee's classification (or classifications).
 - (c) The employee's hourly wage rate (or rates); and, where applicable, employee's overtime hourly wage rate (or rates).
 - (d) The daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).
 - (e) The itemized deductions made.
 - (f) The net wages paid.
- (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 until the job is completed.
- (3) Certification of Payrolls: The CONTRACTOR and each Subcontractor shall submit a weekly statement of compliance in the following form:

Date _____

I, _____, _____ do hereby state:

1. That I pay or supervise the payment of the persons employed by _____ on the _____ that during the payroll period commencing on the _____ day of _____, 20____, and ending the _____ day of _____, 20____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person and that no deductions have been made either

directly or indirectly from the full wages earned by any person other than deductions permitted by law.

2. That any payrolls under this Contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates incorporated into the Contract; that the classifications set forth therein for each laborer or mechanic conform with the work employee performed.

3. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor.

17.8.1. 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 wages rates shall govern.

Archaeological Salvage and Reports

17.9. 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 ENGINEER of their existence and location.

Upon receipt of such notification, the ENGINEER 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 to proceed with the Work in the affected area. In this regard, the ENGINEER 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 Article 10.

Measurement

17.10. Measurement of Quantities for Unit Price Work: Unless otherwise specified, linear or area quantities of Work, such as grading, landscaping, paving, curb, gutter, sidewalk, drive apron, and other Work of a similar nature, shall be determined from measurements or dimensions of such Work and computed in horizontal planes. However, linear quantities of underground cable, fencing, piling, and timber shall be considered as being the true length measured along the longitudinal axis thereof. For pipe Work see related technical specifications; 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 fitting to center of fitting. A station, when used as a definition or term of measurement, will be one hundred (100) linear feet.

Method of Measurement

17.11. Materials and items of Work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular articles 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 a volume by the specified method of measurement or when requested by the CONTRACTOR and approved by the ENGINEER, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the ENGINEER. Unless otherwise provided, when mineral aggregate or roadway material is being paid for by weight, deductions from pay quantities will be made for the weight of water in excess of three percent (3%) if the material is to be treated with bitumen and six percent (6%) if the material is to be water bound.

Units of Measurement

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

Certified Weights

17.13. All materials to be paid for at a Contract unit price per ton shall be weighed on platform scales furnished by the CONTRACTOR or the supplier of the material 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.

ARTICLE 18 UTILITIES

Policy on the proximity of water and sewer lines

18.1. Whenever possible, it is desirable to lay parallel water and sewer lines at least ten (10) feet apart horizontally, and the water line should be a higher elevation than the sewer. If this is not possible, separate trenches will be required in all cases (this shall be effective even though one line has been installed prior to the other), and the water line shall be at least two (2) feet above the sewer. When water and sewer lines cross each other, the water line shall be at least 18 inches (clear space) above the sewer; one full length of pipe should be located so both joints are as far from the sewer as possible; otherwise the sewer shall be of pressure pipe with joints equivalent to water main pipe and pressure tested to 50 psi with zero leakage for ten (10) feet on each side of the water line.

18.2. Existing House Sewer Lateral or Water Service Connections, and Replacement of Mains.

18.2.1. Where house service line connections to existing sewer mains and water mains are encountered, the CONTRACTOR shall insure that the service line will not be disturbed or damaged. Should any service line connection be broken during the construction of the new line, it shall be replaced by the CONTRACTOR with new pipe, appropriate for the application, as determined by the ENGINEER. No extra compensation will be allowed the CONTRACTOR for this item.

18.2.2. Where the horizontal alignment of the new sanitary sewer line coincides with the alignment of an existing sanitary sewer line and the grade of the new line is approximately at the same grade as the existing line or lower, then the existing line shall be removed or dealt with as ordered by the ENGINEER. The cost of this work when applicable shall be paid for under the appropriate item in the Bid Proposal. The ENGINEER shall determine if it is necessary to pump sewage around the replacement work, or if it is possible to temporarily plug the sewer line during the replacement operation. In the case of by-pass pumping, it will be paid for as indicated in the Bid Proposal.

18.3. Operation of the Existing Water System

18.3.1 All shutoffs shall be done by the OWNER. The CONTRACTOR shall notify the OWNER forty-eight (48) hours prior to the date of required shutoff. The OWNER shall make a "trial shutoff" of the system within the project limits prior to issuance of Notice to Proceed, in order to preclude delay of emergency and required shutoffs. If valves cannot be located or are not in operating condition, the OWNER shall notify the CONTRACTOR as soon as possible. The OWNER's personnel will locate the valves, make the necessary repairs, or determine an alternate method of making the shutoff.

18.3.2. The CONTRACTOR shall notify each household, office or other affected water user that a shutoff will be made, giving full details by personal contact if possible or by leaving a door knob hanger notification. CONTRACTOR shall also notify the media, i.e. radio stations and newspaper, the City Water Shop, (575) 439-4244, and the ENGINEER giving full details of the date, time and location of the shutoff. Notifications shall be given at least twenty-four (24) hours in advance of a shutoff.

18.3.3. The CONTRACTOR shall notify the Fire Department when fire hydrants are taken out of service and returned to service.

18.3.4. The OWNER shall be responsible for the actual operation of the valves.

18.3.5. EMERGENCY BREAKS: The Water Division, (575) 439-4244, shall be notified immediately so that it may perform the shutoff.

18.4. Protection and Restoration of Property

18.4.1. 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 easements 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. CONTRACTOR shall give all Public Utility Companies a reasonable notice in writing, but in no event less than forty-eight (48) hours, for any work that CONTRACTOR contemplates which would interfere in any way whatsoever with the service of any existing public utility and City-owned facilities. If such public utility does not cooperate for the protection of its services, the CONTRACTOR shall notify the ENGINEER. 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 ENGINEER 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 or plant of public utility companies and City property to the company or owner involved, and to the ENGINEER.

18.4.2. The CONTRACTOR shall restore at CONTRACTOR's own expense any public, City-owned, or private property damage for which CONTRACTOR is directly or indirectly responsible to a condition equal to that existing before damage. The CONTRACTOR shall promptly notify CONTRACTOR's insurance carrier of the alleged damage, and if CONTRACTOR refuses to do so upon notice or if CONTRACTOR otherwise fails to make a restoration for which CONTRACTOR is responsible, the OWNER may cause such restoration and deduct cost from monies due, or which may become due, the CONTRACTOR.

18.4.3. The CONTRACTOR shall not remove, realign, or adjust any official City traffic control device. CONTRACTOR shall give the ENGINEER forty-eight (48) hours notice of any official City traffic control devices that need to be moved. The OWNER shall move all traffic control devices as soon as practical thereafter.

18.5. Abandoned Utilities

18.5.1. Unless otherwise specified, the CONTRACTOR shall remove all interfering portions of utilities which are shown on the drawings as "abandoned" or "to be abandoned in place" and which interfere with the construction of the project. All abandoned water mains shown on the drawings as "abandoned" or "abandoned in place" or found during construction shall be removed or capped at a minimum, unless otherwise specified. All costs involved in said removals shall be included in the prices Bid for the various items of Work. All such abandoned utilities removed by the CONTRACTOR shall be stored on the site where directed and shall remain the property of the OWNER utility company or contracting agency as determined by the ENGINEER.

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

18.6. Location of Existing Utilities

18.6.1. The public utilities shall be responsible to locate their utilities and provide information stating the horizontal and vertical alignments of same. If field verification excavations are required, the public utility will provide same in a timely manner.

18.6.2. Utilities which upon exploration are found to interfere with the permanent project Work, or which are within the trenching prism as defined by OSHA, will be relocated, altered or reconstructed by others or the ENGINEER may order changes in location, line or grade of structures being built in order to avoid the utilities. The cost of such changes will be paid for under applicable Bid Items.

18.7. Unknown Utilities Disclosed by the CONTRACTOR or by Others During the Contract Work.

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

When said utility is found to occupy the space within the trenching prism as defined by OSHA, or the permanent works to be constructed, it shall be relocated or the CONTRACTOR shall be paid extra for its support.

18.8. Responsibility of the CONTRACTOR

18.8.1. The CONTRACTOR shall be responsible for all costs for the repair of any and all damage to the Contract Work or to any utility (which is previously known and disclosed to CONTRACTOR by the utility) as may be caused by CONTRACTOR's operations. Utilities which are relocated by others in order to avoid interference with structures and which cross the project Work shall be maintained in their relocated positions by the CONTRACTOR. All costs for such work shall be absorbed or included in the prices bid for the various items of Work.

18.9. Delays Caused by Failure to Relocate Utilities

18.9.1. Where parties other than the CONTRACTOR are responsible for the relocation of utilities and a delay in the CONTRACTOR's Work is caused by the failure on the part of said parties to remove or relocate such utilities in time to prevent such delay, or by any action or lack of action on the part of the Contracting Agency, the CONTRACTOR shall be entitled to an extension of the Contract Time as determined by the ENGINEER.

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

CONTRACTOR shall be paid mobilization and demobilization to construct the omitted portion.

ARTICLE 19 TRAFFIC CONTROL

19.1. CONTRACTOR shall perform all signing, barricading and channelization required for the project in accordance with the Manual on Uniform Traffic Control Devices, latest edition. All signs, barricades and channelizing devices used at night shall be reflectorized with retroreflective sheeting (both orange and white). All advance warning signs used at night shall be equipped with flashing warning lights; all channelizing devices used at night shall be equipped with steady burning warning lights. Traffic Control shall comply with Article 01-002.2 - TRAFFIC CONTROL AND MANAGEMENT.

19.2. Traffic control to be used on the project shall be pre-approved by the OWNER.

ARTICLE 20 DIGITAL VIDEO RECORDING

20.1 Prior to initiating construction operations, CONTRACTOR, shall perform digital video recording of the entire project, its full length and width. The CONTRACTOR, shall also include or add as necessary, any areas to be disturbed for material storage, employee parking or equipment storage.

The video documentation shall be completed in digital format; it shall be a minimum resolution of 1920 x 1080 pixels, at 60 fps (frame per second) and in color. The video documentation shall be performed between 10:00 a.m. and 2:00 p.m. during periods of full sun exposure. The actual date of recording shall be date-stamped within each frame of the video. Approval of the video must be obtained from the ENGINEER prior to the commencement of any clearing and grubbing operations.

A DVD copy of the video recording shall be submitted to the ENGINEER, in the format compatible with standard DVD players.

All cost associated with the video recording specified in this article shall be considered incidental to other related items of work and no separate payment will be made unless specifically indicated elsewhere in the Special Provisions.

SECTION 14

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

The following Notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| Timetables | Goals for minority participation for each trade | Goals for female participation for each trade |
|-------------------|--|--|
| | N/A % | 6.9% |

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is:

State of NEW MEXICO

County of OTERO **+**

City of ALAMOGORDO

SECTION 15

FORM CD-511
(REV 1-05)

U.S. DEPARTMENT OF COMMERCE

CERTIFICATION REGARDING LOBBYING

Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

08-79-05104

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

**U. S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**



**EDA CONTRACTING PROVISIONS
FOR CONSTRUCTION PROJECTS**

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.

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1. **DEFINITIONS**

Agreement – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

Architect/Engineer - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

Contract – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

Contract Documents – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

Contractor – The individual or entity with whom the Owner has entered into the Agreement.

Drawings or Plans – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

EDA - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA's role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

Owner – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

Recipient - An entity receiving Federal financial assistance from EDA, including any EDA-approved successor to the entity.

Specifications – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

Subcontractor – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold - currently fixed at \$100,000. *See* 41 U.S.C. 403(11)).
- (b) Termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000).
- (c) Compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967 and as supplemented by Department of Labor regulations at 41 C.F.R. chapter 60 (applicable to all construction contracts awarded in excess of \$10,000 by recipients of federal assistance and their contractors or subrecipients).
- (d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented by Department of Labor regulations at 29 C.F.R. part 3 (all contracts and subgrants for construction or repair).
- (e) Compliance with the Davis-Bacon Act (40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 5 (construction contracts in excess of \$2,000 awarded by Recipients and subrecipients).
- (f) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. (construction contracts awarded by Recipients and subrecipients in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)
- (g) EDA requirements and regulations pertaining to reporting.

(h) EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(i) EDA requirements and regulations pertaining to copyrights and rights in data.

(j) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. § 7606), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, *Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans*, and Environmental Protection Agency regulations at 48 C.F.R. part 15 (applicable to contracts, subcontracts, and subgrants of amounts in excess of \$ 100,000).

4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR'S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.

9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in

the performance of the Work and if, to the actual knowledge of Owner or Engineer, 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 the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. CLAIMS FOR EXTRA COSTS

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

13. CONTRACTORS AND SUBCONTRACTORS INSURANCE

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

- (1) Workmen's Compensation
- (2) Contractor's Public Liability and Property Damage
- (3) Contractor's Vehicle Liability
- (4) Subcontractors Public Liability, Property Damage and Vehicle Liability
- (5) Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds \$100,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed \$100,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**
(as required by section 601 of PWEDA)

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the

rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding

EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) Payrolls and basic records

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at www.dol.gov/esa/forms/whd/index.htm. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. part 3;

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 14(c)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 15(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them

available, EDA or its designee may, after written notice to the Contractor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. part 5.12.

(d) Apprentices and Trainees.

(1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees. Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and

Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, *Equal Employment Opportunity*, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 276(c)) as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. part 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. part 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of Eligibility.

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (c) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (c) of this section.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's

commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and pursuant to rules, regulations, and orders of the Secretary of Labor and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph 17(a) (1) and the provisions of paragraphs 17(a)(1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with or by a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(8) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.

(9) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may

require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.

(10) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;
- (5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;
- (6) Requiring each party to a subcontract to take the affirmative steps of this section; and
- (7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 – 3708); and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

20. **CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS**

(a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.

(b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

(c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.

(d) The Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.

(e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract

provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

(f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to section 319 of Public Law 101-121, which added section 1352, regarding lobbying restrictions, to chapter 13 of title 31 of the United States Code. The new section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations:** Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise

be subject to the prohibitions in and to the Certification and Disclosure requirements of section 319 of Public Law No. 101-121, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic Preservation Officer (SHPO) for recovery of the items. See the National Historic Preservation Act of 1966 (80 Stat 915, 16 U.S.C. § 470) and Executive Order No. 11593 of May 31, 1971.

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of \$100,000

(a) **Definition.** "Facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Contractor agrees to:

- (1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;
- (2) Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
- (3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

(4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint used on the Project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

(1) For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.0006) lead by weight.

(2) For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

(b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

(c) **Definitions**

(1) "Applicable surfaces" are those exterior surfaces which are readily accessible to children under seven years of age.

(2) "Residential structures" means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under seven years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

25. **ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public L. No. 94-163) for the State in which the Work under the Contract is performed.

26. **ENVIRONMENTAL REQUIREMENTS**

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

(1) **Wetlands.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.

(2) **Floodplains.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.

(4) **Endangered Species.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS**

As required by Executive Order 12549, *Debarment and Suspension*, and implemented at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), as defined at 2 C.F.R. part 1326.

(1) By entering into this Contract, and by further executing Form CD-512, the Contractor and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

See also 15 C.F.R. §§ 14.13 or 24.35, as applicable.

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.