City of
ALAMOGORDO

SPECIFICATIONS AND CONTRACT DOCUMENTS
FOR THE CONSTRUCTION OF

CITY OF ALAMOGORDO
ALAMOGORDO AQUATIC CENTER
RC2201

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CITY OF ALAMOGORDO, NEW MEXICO
PUBLIC WORKS BID NO. 2026-001

SEPTEMBER 2026

ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

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SUPPLEMENTAL SPECIFICATIONS (See Attached)

TECHNICAL SPECIFICATIONS (See Attached)

ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

ENGINEER OF RECORD
Robert S Price
88005
201 North Alameda
Las Cruces, NM, 88005
575-526-3111
robprice@asa-architects.com

The technical material and data contained in these Specifications were prepared under the supervision and direction of the undersigned, whose seal, as a Professional Engineer licensed to practice in the State of New Mexico, is affixed below.

_____
Date

[SEAL]

_____ _____
Robert S Price, 88005 5017
License Number

SECTION 1 - ADVERTISEMENT FOR BIDS
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

The City of Alamogordo will receive Sealed Bids at 1376 E. Ninth Street, Alamogordo, New Mexico, 88310, Attn: Engineering Department for the construction of the Project known as **"Alamogordo Aquatic Center", Public Works Bid No. 2026-001,** until **2:00 PM** on **December 15, 2026**, at which time the Bid Opening and reading of the Bids received will begin in the Community Development Conference Room at 1376 E. Ninth Street, Alamogordo, New Mexico. The City Commission of the City of Alamogordo will consider the tabulation of Bids at its next regular meeting or at a later meeting if required.

The Work designated as **Alamogordo Aquatic Center** consists of, General construction of the Alamogordo Aquatic Center at 1100 Oregon Avenue, including sitework, utilities, paving, landscaping, foundations, concrete slab, fabric structure, architectural finishes, building systems, fire sprinklers, and swimming pool., in accordance with the drawings, specifications, and other Contract Documents.

Construction Industries Division (CID) Project Classification Determination:

DESCRIPTION OF WORK:	LICENSE REQUIRED:
General Construction	GA-98 or GB98
Electrical Systems	EE98
Mechanical	MM98
Fire Suppression	MS-12
Specialty Licensing	GS-1, GS-2, GS-14, GS-16, GS-21, GS-24, and GS-25

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 do not satisfy applicable licensing requirements will be considered non-responsive.

The City of Alamogordo has transitioned to a new e-Bid/RFP software system powered by OpenGov. All solicitations will be released electronically through OpenGov and responses from proponents must be submitted electronically through this online platform. By using OpenGov, prospective proponents will be provided with all information regarding a bid including addendums and changes to the project requirements. OpenGov is a completely free service for all respondents. Prior to submitting a proposal, respondents are required to set up their free account with OpenGov. Register your company at City's eProcurement Portal. Only ELECTRONICIALLY SUBMITTED PROPOSALS will now be accepted; system will not accept proposals submitted AFTER due date and time.

Vivian Pedone
Acting Chief Procurement Officer
vpedone@ci.alamogordo.nm.us

City of Alamogordo Purchasing
coapi@ci.alamogordo.nm.us

A Mandatory Pre-Bid Meeting will be held at 10:00 AM on October 13, 2026, in the Community Development Conference Room, 1376 E. Ninth Street, Alamogordo, New Mexico.

Prospective BIDDERS are advised of a 10% Bid Evaluation Criterion for area businesses that will apply to this Project. The CONTRACTOR is advised to obtain specific information as to the qualifications and conditions of the Bid Evaluation Criterion before submitting a Bid.

A Bid Security shall accompany each Bid 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 the performance of the Contract, as well as 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 sixty (60) 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.

Vivian Pedone
Acting Chief Procurement Officer
City of Alamogordo

Advertised on September 24, 2026, and October 1, 2026, in:

Alamogordo News
Albuquerque Journal

SECTION 2 - INSTRUCTIONS TO BIDDERS
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

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 assigned to them 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 before receipt of Bids).

2.0 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

Before submitting a Bid, each BIDDER must:

1.1. Examine and study the Project Plans and Contract Documents thoroughly.

1.2. Visit the site to become familiar with local conditions that may in any manner affect the performance of the Work.

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 further information and data that 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.

1.3. Be familiar with federal, state, and local laws, ordinances, rules, and regulations affecting the performance of the work and employment of labor.

1.4. Carefully correlate any observations with the requirements of the Contract Documents.

1.5. Notify ENGINEER of all conflicts, errors, or discrepancies in the Contract Documents.

1.6. 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 all utilities 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 email to both:

Vivian Pedone
Acting Chief Procurement Officer
vpedone@ci.alamogordo.nm.us

City of Alamogordo Purchasing
coapi@ci.alamogordo.nm.us

Questions received after 2:00 PM on December 1, 2026 will not be answered. A formal written addenda will answer submitted questions and will be binding. Oral clarification will not be binding.

Each Addenda 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 Addenda.

Direct contact with City of Alamogordo elected officials, City staff, the architect, engineer of record, or evaluation committee members regarding this Public Works Bid, except through authorized Purchasing Division personnel, is strictly prohibited. Any such contact will be considered a violation of the procurement process and will result in the BIDDERS' disqualification, with the proposal deemed non-compliant.

4.0 CONTRACT TIME

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 more. **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. 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. 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 the 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 State Wage Rate Decision listed by the New Mexico Department of Workforce Solutions and contained in Section 12 herein shall also be made a part of the Contract. It shall be the BIDDER'S responsibility to be thoroughly 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 Schedule are estimated quantities. Payment will be made at the unit price bid amounts for the Work actually performed. The City 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, 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, 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 notices in conspicuous places available to employees and applicants for employment, 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 the 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 ENGINEER. 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 ENGINEER 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 ENGINEER 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 and adequate, safe access for all residents and businesses along the construction routes to the ENGINEER's satisfaction. 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 clean up 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 emailed request to:

Vivian Pedone
Acting Chief Procurement Officer
vpedone@ci.alamogordo.nm.us

City of Alamogordo Purchasing
coapi@ci.alamogordo.nm.us

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

OWNER and ENGINEER, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

17.0 PLAN HOLDER LIST

At the end of this section is a form for vendors who wish to be placed on the Plan Holder List for this project. Those vendors must complete this form and forward it to the Purchasing Department. Only those vendors who elect to return this completed form will be placed on the Plan Holder List.

18.0 SUBMISSION OF BIDS

The following bid documents are to be submitted as your 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,
Resident Business Certificate (if applicable),
Resident Veterans Preference Certification (if applicable)
Copy of State of New Mexico, Regulation and Licensing Department, Construction Industries Division License(s)
Copy of New Mexico Department Workforce Solutions, Certificate of Public Works Registration
Section 13 - Non-Collusion Affidavit
Section 14 - Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Section 15 - Public Disclosure of Substantial Interest
Section 16 - Disclosure of Subcontracting or Employment of Public Officer/Employee
Section 17 - Contractor Code of Conduct
and any other information that may be required.

Prices shall be filled in for all items on the Bid Schedule (Section 3). The Bid Schedule must be completed in ink or by typewriter.

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 in the signature below. 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.

The signer of the Bid shall initial alterations to Bid amounts by erasures or interlineations. Any Bid not duly signed will not be considered. All Bids 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: Engineering Department, and the name and address of the BIDDER.

19.0 BIDDER QUALIFICATIONS, PAST EXPERIENCE, AND REFERENCES

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 the OWNER determines are not qualified to carry out the obligations of the Contract and complete the Project.

The Owner requires each Bidder to demonstrate sufficient experience, qualifications, technical capability, personnel, financial capacity, and resources to successfully perform the work associated with the Alamogordo Aquatic Center.

The information requested in this section shall be submitted with the Bid and shall be used by the Owner for the purpose of determining whether the Bidder is qualified and responsible to perform the Work.

Submission of this information does not relieve the Bidder of any requirements contained elsewhere in the Contract Documents.

The Bidder shall provide complete and accurate information. The Owner reserves the right to verify any information provided and to contact project owners, architects, engineers, construction managers, sureties, references, and other parties identified by the Bidder.

Incomplete or materially inaccurate qualification information may be grounds for rejection of the Bid in accordance with the requirements of the procurement.

20.0 BID SECURITY

Bid Security in the amount of five (5) percent of the amount of the Bid shall accompany the Bid documents. This Bid Security must be in the form of a certified or bank 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 these Instructions to Bidders as liquidated damages for the delay and additional expenses caused to 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. 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. 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 Executed AGREEMENT or the sixty-first (61st) day after the Bid Opening.

21.0 GROSS RECEIPTS TAXES, PERMITS AND LICENSES

Prices stated in the Bid Schedule shall not include applicable State gross receipts or applicable local option taxes. Taxes shall be added to the subtotal Bid amount. 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.

22.0 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 the name of BIDDER and BIDDER's New Mexico contractor's license number and classification.

B. Check the list of subcontractors to be utilized for the project.

C. Verify that the proper Bid Security is enclosed.

D. Verify receipt of the Statement of Bidder's Qualifications.

E. Verify the 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 Schedule is signed.

H. Verify receipt of State of New Mexico, Regulation and Licensing Department, Construction Industries Division 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 receipt of Resident Veterans Preference Certification.

L. Verify any other information that may be required from other funding sources. (If this is a federally funded project, federal "pink sheets" must be completed and signed.)

M. Proceed with reading the Bid amounts.

N. 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.

O. Non-Collusion Affidavit

P. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Q. Public Disclosure of Substantial Interest

R. Disclosure of Subcontracting or Employment of Public Officer/Employee

S. Contractor Code of Conduct

23.0 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 sixty (60) days. The OWNER may return any or all Bids along with the Bid Security prior to that date.

24. AWARD OF CONTRACT

The OWNER reserves the right to reject any and all Bids, to waive any and all formalities. Also, the OWNER reserves the right to reject the bid of any BIDDER if the OWNER believes that it would not be in the OWNER's best interest to award 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 the Award will be in the City's best interests.

If the Contract is to be Awarded, OWNER will give the Successful BIDDER a Notice of Award within seventy-five (75) 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.

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

Upon receipt of the Notice of Award, the BIDDER will Execute the formal Contract Documents within ten (10) days and deliver the Performance Bond, Labor, 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. They 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. The CONTRACTOR'S inability to provide a bond acceptable to the OWNER may render the bid non-responsive.

26.0 EXECUTION OF CONTRACT

This Contract Agreement will be executed in two (2) counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement. The parties may execute this Contract electronically, including by electronic signature or scanned copy of a signed counterpart, and any such electronic execution shall have the same legal effect as an original handwritten signature. Each party shall retain a fully executed copy of this Contract.

27.0 CONSTRUCTION SCHEDULE

The CONTRACTOR shall submit to the OWNER a proposed construction schedule in accordance with Article 2.8 of the General Conditions, Section 15. The CONTRACTOR is required to

schedule the Work so as to minimize disturbance to the local residents and businesses. Allowable days for the contract are described in Section 8, Article 3, Contract Agreement.

28.0 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.

29.0 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 the CONTRACTOR's understanding by indicating which equipment and material the CONTRACTOR intends to furnish and install and by detailing the fabrication and installation the 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.

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

B. Submit to the ENGINEER within fifteen (15) days after the Notice of Award.

C. Submittals shall be made in groups of items which are related to facilitate cross-checking and coordination.

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.

30.0 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 the same period as stated above. The Guarantee Period begins on the date of Substantial Completion 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 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 Substantial Completion of the Work.

31.0 BID EVALUATION CRITERION FOR AREA

Effective March 15, 2015, the Alamogordo City Commission adopted Ordinance No. 1490, establishing Bid Evaluation Criterion for area businesses. Any business licensed in New Mexico, with a current business registration from the City of Alamogordo, with fixed offices or distribution points within fifteen (15) miles of the city limits of Alamogordo and able to furnish evidence of payment of New Mexico Gross Receipts tax shall qualify. If the Bid from the local business multiplied by 0.90 is less than or equal to the lowest responsible BIDDER, who does not qualify as a local business, the Contract will be offered to the local business at the same price as the lowest Bid. Acceptance of the offer is optional for the local business. If the area business rejects the offer, the Contract will be Awarded to the lowest responsible BIDDER.

Such acceptance by the area business must be in writing and signed by a principal officer of the firm. In addition, the acceptance package must include an affidavit that the area business meets the criterion set forth in the ordinance and an adjusted Bid Schedule such that the grand total is equal to the lowest BIDDER's Price.

32.0 PRE-BID MEETING

A Mandatory Pre-Bid Meeting will be held at 10:00 AM on October 13, 2026, in the Community Development Conference Room1376 E. Ninth Street, Alamogordo, New Mexico.

33.0 CONSTRUCTION INDUSTRIES DIVISION (CID) PROJECT CLASSIFICATION DETERMINATION

DESCRIPTION OF WORK:	LICENSE REQUIRED:
General Construction	GA-98 or GB98
Electrical Systems	EE98
Mechanical	MM98
Fire Suppression	MS-12
Specialty Licensing	GS-1, GS-2, GS-14, GS-16, GS-21, GS-24, and GS-25

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 do not satisfy applicable licensing requirements will be considered non-responsive.

34.0 NEW MEXICO PREFERENCES

A business eligible for a New Mexico Resident Business/Contractor, Veterans, Native American Resident Preference (Preference) must obtain a Preference certificate from the NM Taxation & Revenue Department. In order for the appropriate Preference to be applied to this solicitation, the expenditure for this solicitation cannot involve federal funds, and Bidder must submit a copy of its Preference certificate along with its response to the solicitation. Applicable Preferences will be applied to monetary values only, in accordance with §13-1-21 NMSA 1978, not percentage discounts or other non-monetary values. Additionally, only one submitted Preference will be applied per solicitation, not multiple. Applications are available for download at: https://www.tax.newmexico.gov/businesses/business-preference-certification/

New Mexico Business Preference
A copy of the certification must accompany BID.

New Mexico Resident Veterans Business Preference
A copy of the certification must accompany BID.

Local Business Preference, New Mexico Business Preference, and New Mexico Resident Veteran's Business Preference cannot be cumulative. The BIDDER will only be credited one of the preferences, as applicable.

SECTION 3 - BID SCHEDULE
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

BIDDER agrees to perform all the Work described in the specifications and shown on the Plans for the following unit of lump sum prices.

The Bidder, in response to the Invitation for Bids, and having examined the Site and Bidding Documents prepared by ASA Architects, and the Addenda acknowledged below, and being familiar with all conditions surrounding the construction of the proposed project including availability of materials, equipment, and labor, hereby proposes to perform all work for the construction of the above referenced project for the prices stated below.

In submitting this Bid, the Bidder represents that Bidder has financial ability and experience to complete the Work and agrees to the following:

1. To hold the Bid open for 60 days.
2. To accept the provisions of the Instructions to Bidders.
3. To enter into and execute a Contract, if awarded, on the basis of this Bid, and to furnish Performance and Labor and Materials Payment Bonds.
4. To accomplish work in accordance with the Contract Documents.
5. To complete the work within 548 calendar days from the commencement date established in the Notice to Proceed.

The prices set forth in this Bid Form include all work necessary to complete the construction, including overhead, profit, items of incidental expenses, permits, taxes except New Mexico Gross Receipts Tax and local option tax, and any other expenses applicable to complete the construction. It is understood that New Mexico Gross Receipts Tax and local option tax will be paid by the Owner and are to be included as a separate line item on Applications for Payment. The Bidder agrees to construct this project for the following lump sum prices:

BID LOT No. 1 (BASE BID) – New Aquatic Center:

Dollars $ _____ (written)

_____
(number)

BID LOT No. 2 – Outdoor Deck:

Dollars $ _____ (written)

_____
(number)

BID LOT No. 3 – Shade Deck:

Dollars $ _____ (written)

_____

(number)

BID LOT No. 4 – Canopy:

Dollars $ _____ (written)

_____

(number)

BID LOT No. 5 – Reception 100A:

Dollars $ _____ (written)

_____

(number)

BID LOT No. 6 – Landscaping and Irrigation

Dollars $ _____ (written)

_____

(number)

ADDITIVE ALTERNATE No. 1 – Pool Deck Coating:

Dollars $_____ (written)

_____

(number)

ADDITIVE ALTERNATE No. 2 – Overhead Doors:

Dollars $_____ (written)

_____

(number)

ADDITIVE ALTERNATE No. 3 - Lockers:

Dollars $ _____ (written)

_____

(number)

ADDITIVE ALTERNATE No. 4 – Window Blinds:

Dollars $ _____ (written)

_____

(number)

ADDITIVE ALTERNATE No. 5 – Windows:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 6 – Acoustical Wall Panels:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 7 – Wall Graphics:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 8 – Multi-purpose Room Counters and Cabinets:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 9 – Service Drive:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 10 – Seal Coat Existing Parking:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 11 – Underwater Pool Light:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 12 – Video Board:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 13 – Swimming Pool Timing System:

Dollars $ _____(written)

_____

(number)

ADDITIVE ALTERNATE No. 14 – Data Cabling and Trim:

Dollars $ _____(written)

_____

(number)

DEDUCTIVE ALTERNATE No. 1 – Aluminum Fencing at Outdoor Deck:

Dollars $ _____ (written)

_____

(number)

DEDUCTIVE ALTERNATE No. 2 – Aluminum Fencing at Shade Deck:

Dollars $ _____ (written)

_____

(number)

NOTE: Gross receipts tax shall be paid with each pay request as it is submitted at the current tax rate for Alamogordo, New Mexico (Alamogordo – 0.081875)

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 **Alamogordo Aquatic Center - Public Works Bid No. 2026-001**, 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:

ADDENDUM No(s): _____

Call Out Notice Acknowledgement: _____

Authorized Signature of BIDDER: _____

BIDDER Business Name: _____

Signer Name: _____

Signer Title: _____

BIDDER'S New Mexico Contractors License No. Classification: _____

Federal ID Number (FEIN): _____ Phone No.: _____

EMAIL: _____ Fax No.: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Authorized Signature of BIDDER: _____

(SEAL) If BID Proposal is submitted by a corporation.

SECTION 4 - SUBCONTRACTOR'S FAIR PRACTICE ACT COMPLIANCE
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

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

Listing Threshold	$5,000.00 or one-half (1/2) of one percent (1%) of the engineer's or architect's estimate of the total Project cost, whichever is greater.

For each category of the Project list, all Subcontractors, sub-Subcontractors, other organizations, persons which the BIDDER will be subcontracting, **who will perform work or labor, or render service to the BIDDER**, 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 either received no bid for that category or one (1) bid was received (**note: the BIDDER must designate on the list of Subcontractors that either "no bid was received" or "one bid was received". The latter designation shall not occur more than one time on the subcontractor list**), 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.

Contractor and Subcontractors will register with the New Mexico Workforce Solutions on-line database exchange system at www.dws.state.nm.us/Public-Works.

The Owner reserves the right to require additional information regarding proposed subcontractors as permitted by the Contract Documents and applicable procurement requirements.

LIST OF PROJECT SUBCONTRACTORS FOR
AMOUNTS EXCEEDING THE LISTING THRESHOLD
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001
THIS FORM MUST BE FILLED OUT AND SUBMITTED WITH BID

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
Business Email Address _____
NM Contractor's License No. _____
Type of Work _____
Amount $ _____
Federal Employer ID# _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
Business Email Address _____
NM Contractor's License No. _____
Type of Work _____
Amount $ _____
Federal Employer ID# _____

Subcontractor's Business Name _____
Principal Place of Business _____
Telephone No. _____
Business Email Address _____
NM Contractor's License No. _____
Type of Work _____
Amount $ _____
Federal Employer ID# _____

Authorized Signature of BIDDER: _____ Date: _____

Duplicate, complete, and submit additional sheets as required.

SECTION 5 - BID BOND
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____,
as PRINCIPAL, and _____, as SURETY are held and firmly bound unto the City of Alamogordo, 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 **Alamogordo Aquatic Center, PUBLIC WORKS BID No. 2026-001**.

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.

_____ _____
[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-Fact[1] , State of _____

[1]Power-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
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001
(TO BE SUBMITTED BY THE BIDDER AND INCLUDED WITH BID)

ORGANIZATIONAL EXPERIENCE

Provide a brief description of the Bidder's organizational experience with projects of similar size and complexity.

Years of Experience Performing Work Similar to This Project: _____. .

RELEVANT PROJECT EXPERIENCE

The Bidder shall identify a minimum of three (3) and a maximum of five (5) completed projects that demonstrate experience relevant to the Work.

Preference should be given to projects involving aquatic centers, natatoriums, swimming pools, recreation centers, athletic facilities, public facilities, or other buildings with specialized mechanical, humidity-control, plumbing, structural, electrical, or aquatic systems. At least two (2) projects should demonstrate experience with natatoriums, aquatic centers, indoor swimming facilities, or substantially similar facilities.

Projects should generally have been completed within the past ten (10) years, unless an older project is particularly relevant to the proposed Work.

PROJECT EXPERIENCE NO. 1

Project Name:

Owner:

Owner Address:

Owner Contact:

Telephone:

Email:

Architect/Engineer:

General Contractor/Bidder's Role

Project Location:

Original Contract Amount: $

Final Contract Amount: $

Project Delivery Method:

☐ Design-Bid-Build
☐ Construction Manager at Risk
☐ Design-Build
☐ Other:

Was the Bidder the Prime Contractor?

☐ Yes ☐ No

Approximate Building Area: _____

Pool/Water Feature Size and Type, if applicable:

Description of Work Performed:

Relevant Project Features:

Check all that apply.

☐ Indoor Natatorium
☐ Competition Pool
☐ Recreation Pool
☐ Therapy Pool
☐ Leisure Pool
☐ Diving Pool
☐ Water Features
☐ Pool Mechanical Systems
☐ Pool Filtration/Treatment Systems
☐ HVAC Systems
☐ Natatorium Dehumidification
☐ Plumbing Systems
☐ Electrical Systems
☐ Structural Work
☐ Building Envelope
☐ Specialized Finishes
☐ Public Recreation Facility
☐ Phased Construction
☐ Occupied Facility
☐ Other:

Reason Project Is Relevant to This Bid:

PROJECT EXPERIENCE NO. 2

Project Name:

Owner:

Owner Address:

Owner Contact:

Telephone:

Email:

Architect/Engineer:

General Contractor/Bidder's Role:

Project Location:

Original Contract Amount: $

Final Contract Amount: $

Project Delivery Method:

☐ Design-Bid-Build
☐ Construction Manager at Risk
☐ Design-Build
☐ Other:

Was the Bidder the Prime Contractor?

☐ Yes ☐ No
☐
Approximate Building Area:_____

Pool/Water Feature Size and Type, if applicable:

Description of Work Performed:

Relevant Project Features:

Check all that apply.

☐ Indoor Natatorium
☐ Competition Pool
☐ Recreation Pool
☐ Therapy Pool
☐ Leisure Pool
☐ Diving Pool
☐ Water Features
☐ Pool Mechanical Systems
☐ Pool Filtration/Treatment Systems
☐ HVAC Systems
☐ Natatorium Dehumidification
☐ Plumbing Systems
☐ Electrical Systems
☐ Structural Work
☐ Building Envelope
☐ Specialized Finishes
☐ Public Recreation Facility
☐ Phased Construction
☐ Occupied Facility
☐ Other:

Reason Project Is Relevant to This Bid:

PROJECT EXPERIENCE NO. 3

Project Name:

Owner:

Owner Address:

Owner Contact:

Telephone:

Email:

Architect/Engineer:

General Contractor/Bidder's Role:

Project Location:

Original Contract Amount: $

Final Contract Amount: $

Project Delivery Method:

☐ Design-Bid-Build
☐ Construction Manager at Risk
☐ Design-Build
☐ Other:

Was the Bidder the Prime Contractor?

☐ Yes ☐ No

Approximate Building Area: _____

Pool/Water Feature Size and Type, if applicable:

Description of Work Performed:

Relevant Project Features:

Check all that apply.

☐ Indoor Natatorium
☐ Competition Pool
☐ Recreation Pool
☐ Therapy Pool
☐ Leisure Pool
☐ Diving Pool
☐ Water Features
☐ Pool Mechanical Systems
☐ Pool Filtration/Treatment Systems
☐ HVAC Systems
☐ Natatorium Dehumidification
☐ Plumbing Systems
☐ Electrical Systems
☐ Structural Work
☐ Building Envelope
☐ Specialized Finishes
☐ Public Recreation Facility
☐ Phased Construction
☐ Occupied Facility
☐ Other:

Reason Project Is Relevant to This Bid:

NATATORIUM AND AQUATIC FACILITY EXPERIENCE

Because the Work may include specialized conditions associated with aquatic facilities, the Bidder shall specifically identify experience with indoor aquatic environments. Attach additional sheets if necessary.

Provide information regarding the Bidder's experience with:

Natatorium HVAC and Environmental Control

Describe experience with HVAC systems designed for high-humidity indoor environments, including dehumidification, corrosion control, ventilation, air distribution, energy recovery, and environmental controls.

Pool Mechanical Systems

Describe experience with pool circulation, filtration, chemical treatment, heating, pumping, controls, and related mechanical systems.

Building Materials and Finishes

Describe experience with materials and construction methods suitable for high-humidity and chemically treated environment.

Coordination of Specialty Trades

Describe experience coordinating pool contractors, mechanical contractors, electrical contractors, plumbing contractors, controls contractors, waterproofing contractors, and other specialty trades and experience with tension-fabric structures.

Testing, Commissioning, and Start-Up

Describe experience with testing, balancing, commissioning, start-up, operator training, and turnover of aquatic facilities.

PROJECT MANAGEMENT TEAM

Identify the principal individuals who will be assigned to this Project.

Project Manager

Name:

Title:

Years with Bidder:

Years of Construction Experience:

Years of Relevant Aquatic/Natatorium Experience:

Relevant Projects:

Superintendent

Name:

Title:

Years with Bidder:

Years of Construction Experience:

Years of Relevant Aquatic/Natatorium Experience:

Relevant Projects:

Other Key Personnel

Resumes for key personnel may be attached.

REFERENCES AND AUTHORIZATION TO VERIFY INFORMATION

By submitting this qualification information, the Bidder authorizes the Owner and its representatives to contact the references and project owners identified herein for the purpose of verifying the Bidder's experience, performance, project history, and qualifications.

The Bidder acknowledges that references may be asked about such matters as:

- Quality of workmanship;
- Ability to meet project schedules;
- Project management;
- Communication;
- Coordination with the Owner and design team;
- Change-order management;
- Safety performance;
- Subcontractor management;
- Responsiveness;
- Completion and closeout;
- Warranty performance; and
- Overall contract performance.

The Owner may consider information obtained through reference checks to the extent permitted by applicable law and the procurement documents.

Provide a minimum of **three (3)** references for completed projects of similar size, scope, or complexity. At least one reference should, where available, be for an aquatic, natatorium, recreation, or other technically complex public facility.

REFERENCE NO. 1

Project: _____

Owner: _____

Reference Contact: _____

Title: _____

Telephone: _____

Email: _____

Project Location: _____

Contract Amount: $_____

Completion Date: _____

Bidder's Role: _____

REFERENCE NO. 2

Project: _____

Owner: _____

Reference Contact: _____

Title: _____

Telephone: _____

Email: _____

Project Location: _____

Contract Amount: $_____

Completion Date: _____

Bidder's Role: _____

REFERENCE NO. 3

Project: _____

Owner: _____

Reference Contact: _____

Title: _____

Telephone: _____

Email: _____

Project Location: _____

Contract Amount: $_____

Completion Date: _____

Bidder's Role: _____

PERFORMANCE HISTORY

For each project identified above, disclose whether any of the following occurred:

Termination for cause or default:

☐ No ☐ Yes

If yes, provide an explanation:

Failure to complete a project within the contracted time:

☐ No ☐ Yes

If yes, provide an explanation:

Assessment of liquidated damages:

☐ No ☐ Yes

If yes, provide an explanation:

Material construction claims or disputes:

☐ No ☐ Yes

If yes, provide an explanation:

Litigation arising from construction performance:

☐ No ☐ Yes

If yes, provide an explanation:

Bond claim, surety takeover, or payment/performance bond claim:

☐ No ☐ Yes

If yes, provide an explanation:

ADDITIONAL INFORMATION

The Bidder may provide additional information demonstrating its qualifications for this Project.

Include information regarding:

- Awards or recognition for relevant projects;
- Specialized aquatic construction experience;
- Experience with public-sector projects;
- Experience with similar project sizes;
- Experience with phased construction;
- Experience working in occupied facilities;
- Specialized certifications;
- Relevant personnel qualifications;
- Innovative construction methods;
- Commissioning experience; and
- Other information directly relevant to successful completion of the Work.

Additional information:

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 BIDDERS Qualifications. This _____ day of _____, 20_____, dated at _____.

_____
Name of BIDDER

By: _____

Title: _____

State of _____)
)ss.
County of _____)

_____, 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 CONTRIBUTIONS DISCLOSURE FORM
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

Pursuant to Chapter 81, Laws of 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 (2) 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 (2) 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 (2) 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 Codes 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:

Contributions Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contributions(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

Authorized Signature of BIDDER: _____ Date: _____

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250.00) WERE MADE to an applicable public official by me, a family member, or representative.

Authorized Signature of BIDDER: _____ Date: _____

SECTION 8

CONTRACT AGREEMENT

This AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and between the City of Alamogordo, a New Mexico municipal corporation ("OWNER") and _____, a New Mexico corporation ("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:

ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

- Notice to Proceed.
- Bid Documents and CONTRACTOR's Bid Schedule
- 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 18, 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:

ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

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 within **Five Hundred Forty Eight (548) calendar days** after the date of written "Notice to Proceed", except as hereafter extended by a 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 **Five Thousand ($5,000.00)** 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 the 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 15-4-28, 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 18, 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 18, 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 18, 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 Rusty Payne, Contracted Project 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
Engineering Department
1376 E. Ninth Street
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 accordance 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.

Pursuant to Section 15-1-191, 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 (2) originals 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
[CONTRACTOR]

By: _____

NM Taxpayer Identification Number:
Federal Taxpayer Identification Number:

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

By: _____
Robert Stockwell, City Manager

APPROVED AS TO FORM:

_____
City Attorney

SECTION 9

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____,
as PRINCIPAL, herein after called the CONTRACTOR, and _____,
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 the City of Alamogordo, 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 _____, 20____, entered into a contract described as follows: **Alamogordo Aquatic Center, PUBLIC WORKS BID No. 2026-001**, 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 THIS _____ day of _____, 20 _____.

_____
[CONTRACTOR PRINCIPAL]

By: _____

Title: _____

New Mexico Contractor's
License No. _____

ATTEST:

_____

_____
Surety

By: _____

Title: _____

ATTEST:

_____

SECTION 10

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____,
as PRINCIPAL, herein after called the CONTRACTOR, and _____,
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 the City of Alamogordo, 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 _____, 20____, entered into a contract described as follows: **Alamogordo Aquatic Center, PUBLIC WORKS BID No. 2026-001**, 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 15-4-1 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 THIS _____ day of _____, 20 _____.

_____
[CONTRACTOR PRINCIPAL]

By: _____

Title: _____

New Mexico Contractor's
License No. _____

ATTEST:

_____

_____
Surety

By: _____

Title: _____

ATTEST:

_____

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 18

SECTION 12

WAGE RATES
ALAMOGORDO AQUATIC CENTER
PUBLIC WORKS BID NO. 2026-001

WAGE RATES DO NOT PERTAIN TO
PROJECTS UNDER $60,000.00

You are hereby advised that where differences exist between the minimum wage rates shown, the higher wage rates shall govern, if applicable.

TYPE "B" – GENERAL BUILDING

Effective January 1, 2026

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Cement Mason	26.26	11.61	0.60
Millwright/pile driver	51.77	22.13	0.60
Plasterer	27.16	9.59	0.60
Plumber/Pipefitter	39.92	16.85	0.60
Sprinkler Fitter	39.94	28.08	0.60
Asbestos Workers/Heat and Frost Insulators			
Asbestos Workers/Heat and Frost insulators	39.23	12.16	0.60
Asbestos Workers/Heat and Frost insulators: Los Alamos County	41.36	12.16	0.60
Boilermaker/Blacksmith			
Boilermaker/blacksmith	35.88	32.28	0.60
Boilermaker/blacksmith: San Juan County	36.83	31.88	0.60
Bricklayer/Block Layer/Stonemason			
Bricklayer/Block layer/Stonemason	33.41	12.04	0.60
Bricklayer/Block layer/Stonemason Curry, DeBaca, Quay and Roosevelt counties	23.10	8.98	0.60
Bricklayer/Block layer/Stonemason Dona Ana, Otero, Eddie and Lea counties	26.42	8.98	0.60
Carpenter			
Carpenter/Lather	32.12	14.28	0.60
Carpenter: Los Alamos County	38.56	14.70	0.60
Electricians-Outside Classifications: Zone 1			
Ground man	28.54	13.36	0.60
Equipment Operator	40.94	17.73	0.60

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Lineman or technician	51.71	21.43	0.60
Cable Splicer	52.98	21.75	0.60
Electricians-Outside Classification: Zone 2			
Ground man	28.54	13.36	0.60
Equipment Operator	40.94	17.73	0.60
Lineman or technician	51.71	21.43	0.60
Cable Splicer	52.98	21.75	0.60
Electricians-Outside Classifications: Los Alamos County			
Ground man	29.35	13.38	0.60
Equipment Operator	42.12	17.76	0.60
Lineman	53.07	21.77	0.60
Journeyman Technician	49.55	20.89	0.60
Cable Splicer	58.28	23.07	0.60
Electricians-Inside Classifications: Zone 1			
Wireman/low voltage technician	42.30	13.42	0.60
Cable Splicer	46.53	13.55	0.60
Electricians-Inside Classification: Zone 2			
Wireman/low voltage technician	46.11	13.53	0.60
Cable Splicer	50.34	13.67	0.60
Electricians-Inside Classification: Zone 3			
Wireman/low voltage technician	48.65	13.60	0.60
Cable Splicer	52.88	13.74	0.60
Electricians-Inside Classification: Zone 4			
Wireman/low voltage technician	53.30	13.75	0.60
Cable Splicer	57.53	13.87	0.60

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Electricians-Inside Classification: Doña Ana, Hidalgo, Luna and Otero Counties			
Wireman/low voltage technician	40.00	9.92	0.60
Cable splicer	40.00	9.92	0.60
Electricians-Inside Classification: Los Alamos County			
Wireman/low voltage technician	48.65	16.04	0.60
Cable Splicer	52.88	16.38	0.60
Elevator Constructor			
Elevator Constructor	53.27	40.89	0.60
Elevator Constructor Helper	37.30	40.89	0.60
Glazier			
Glazier/Fabricator	22.75	7.70	0.60
Glazier: Los Alamos County	22.75	7.70	0.60
Ironworker			
Ironworker Journeyman	29.45	19.51	0.60
Probationary Ironworker	23.56	19.51	0.60
Painter			
Painter	21.00	5.75	0.60
Painter: Los Alamos County	35.85	12.82	0.60
Paper Hanger			
Paper Hanger	21.00	5.75	0.60
Paper Hanger: Los Alamos County	36.85	12.82	0.60
Drywall Finisher/Taper	31.60	9.58	0.60
Drywall Finisher/Taper: Los Alamos County	35.85	12.82	0.60

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Roofer			
Roofer Journeyman	31.20	9.36	0.60
Roofer Helper	18.72	9.36	0.60
Sheet Metal Worker			
Zone 1	40.74	19.29	0.60
Zone 2 – Industrial	41.74	19.29	0.60
Zone 3 – Los Alamos County	42.74	19.29	0.60
Soft Floor Layer			
Soft Floor Layer	21.52	9.40	0.60
Soft Floor Layer: Los Alamos County	35.87	12.92	0.60
Tile Setter			
Tile Setter	24.46	8.81	0.60
Tile Setter Finisher	16.53	8.81	0.60
Laborers			
Group I- Unskilled	22.37	8.48	0.60
Group II – Semi-skilled	23.37	8.48	0.60
Group III- Skilled	23.37	8.48	0.60
Group IV - Specialty	25.62	8.48	0.60
Operators			
Group I	26.61	8.22	0.60
Group II	29.07	8.22	0.60
Group III	29.61	8.22	0.60
Group IV	30.11	8.22	0.60

Base Rate | Fringe Rate | Apprenticeship

Group V	30.33	8.22	0.60
Group VI	30.57	8.22	0.60
Group VII	30.68	8.22	0.60
Group VIII	34.14	8.22	0.60
Group IX	36.89	8.22	0.60
Group X	40.77	8.22	0.60
Truck Drivers			
Group I-VII	16.65	8.27	0.60
Group VIII	16.71	8.27	0.60
Group IX	18.65	8.27	0.60

NOTE: All contractors are required to pay SUBSISTENCE, ZONE, AND INCENTIVE PAY according to the particular trade. More information available at https://www.dws.state.nm.us/public-works.

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the New Mexico Department of Workforce Solutions Labor Relations Division at (505) 841-4400 or visit us online at www.dws.state.nm.us.

SECTION 13

NON-COLLUSION AFFIDAVIT

The undersigned BIDDER, being duly sworn on oath, submits herewith to the City of Alamogordo, hereinafter called the OWNER, that all statements of fact in such proposal are true;

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said BIDDER has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the OWNER or of any BIDDER of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading or proposal, said BIDDER;

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;

2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said BIDDER or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals;

3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said BIDDER or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal price, or of that of anyone else;

4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual of group of individuals, except that OWNER, or to any person or persons who have a partnership or other financial interests with said BIDDER in his business.

_____
Name of BIDDER

By: _____

Title: _____

State of _____)
)ss.
County of _____)

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

_____
Notary Public

My Commission expires _____, 20 _____.

SECTION 14

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

BIDDER certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three year period preceding this proposal been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses; and

4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Authorized Signature of BIDDER: _____ Date: _____

SECTION 15

PUBLIC DISCLOSURE OF SUBSTANTIAL INTEREST

Pursuant to the New Mexico Governmental Conduct Act, NMSA 1978, § 10-16-7

The undersigned PUBLIC OFFICER or EMPLOYEE, being duly sworn on oath, hereby submits to the City of Alamogordo, hereinafter called the OWNER, that all statements of fact herein are true;

That this disclosure is made openly and in the public record, in advance of any official action of the OWNER with respect to the proposed contract;

That the undersigned has a substantial interest, as defined under NMSA 1978, § 10-16-7, in the following contract described as follows: **Alamogordo Aquatic Center, PUBLIC WORKS BID No. 2026-001**;

That said, interest has been fully disclosed in writing and, if applicable, read into the minutes of the public meeting at which such matter shall be considered;

That the undersigned acknowledges and affirms that the proposed contract must be awarded only through a lawful competitive process consistent with the New Mexico Procurement Code;

That the undersigned shall recuse themselves from all participation, influence, communication, deliberation, or vote of the OWNER regarding such contract, and shall take no action, direct or indirect, to affect the outcome of such procurement;

And further, this disclosure is submitted per the Governmental Conduct Act and is intended to preserve the integrity of the procurement process and protect the public interest.

Nature of Interest (ownership, employment, partnership, or other):_____

_____
PUBLIC OFFICER or EMPLOYEE

Name:_____

Title/Position:_____

State of _____)
)ss.
County of _____)

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

_____
Notary Public

My Commission expires _____, 20 _____.

SECTION 16

DISCLOSURE OF SUBCONTRACTING OR EMPLOYMENT OF PUBLIC OFFICER/EMPLOYEE

Pursuant to the New Mexico Governmental Conduct Act, NMSA 1978, § 10-16-7

The undersigned BIDDER, being duly sworn on oath, hereby submits to the City of Alamogordo, hereinafter called the OWNER, that all statements of fact herein are true;

That this disclosure is made openly and in the public record, in advance of any official action of the OWNER with respect to the proposed contract;

That the undersigned has not, directly or indirectly, by agreement, communication, or arrangement, attempted to induce action prejudicial to the interest of the OWNER or of any other BIDDER;

That the undersigned BIDDER hereby discloses the employment, subcontracting, ownership, partnership, or other financial interest of any public officer or employee of the City of Alamogordo or their immediate family in connection with this bid or contract described as follows: **Alamogordo Aquatic Center, PUBLIC WORKS BID No. 2026-001**;

That the undersigned acknowledges and affirms that such a contract may be awarded only through a lawful competitive process, and that no sole-source or preferential award shall be permitted in violation of NMSA 1978, § 10-16-7;

That the undersigned further acknowledges that any public officer or employee disclosed herein shall recuse themselves from all OWNER deliberations, decisions, or votes regarding this contract;

And further, this disclosure is submitted per the Governmental Conduct Act and is intended to preserve the integrity of the procurement process and protect the public interest.

Nature of Interest (employment, subcontract, ownership, partnership, or other): _____

_____ _____

Name of PUBLIC OFFICER or EMPLOYEE Name of BIDDER

_____ By: _____

Title/Position with City

Title: _____

State of _____)

)ss.

County of _____)

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

_____

Notary Public

My Commission expires _____, 20 _____.

SECTION 17

CONTRACTOR CODE OF CONDUCT

The City of Alamogordo, hereinafter called the OWNER, hereby establishes this Contractor Code of Conduct as a binding standard for all contractors, subcontractors, and workers engaged on City projects. Compliance with this Code is a material condition of performing work for the OWNER.

The undersigned BIDDER, being duly sworn, certifies and affirms the following:

Professional Conduct and Communication - The BIDDER shall communicate promptly, accurately, and professionally with residents, businesses, City staff, and stakeholders affected by project activities. Disrespectful or unprofessional conduct toward the public, City staff, or other contractors will not be tolerated. All concerns, disputes, or project-related issues shall follow the established chain of authority: Project Manager → ENGINEER→ Utilities Director → City Manager. Direct involvement of elected officials in day-to-day operational matters constitutes prohibited interference under the City Charter. The BIDDER shall avoid any actions, relationships, or outside influences that compromise impartiality or diminish public confidence.

Compliance and Safety - The BIDDER shall always comply with applicable federal, state, and local laws, ordinances, regulations, and codes. The BIDDER is responsible for ensuring that all employees, subcontractors, and suppliers adhere to safety standards, including the use of Personal Protective Equipment (PPE) as required by regulatory and industry standards. All job sites shall be maintained in compliance with shall comply with Occupational Safety and Health Administration (OSHA) requirements and City safety policies.

Responsibility and Accountability - The BIDDER is responsible for the conduct, performance, and compliance of its subcontractors, employees, and suppliers. All projects funded by the taxpayers of Alamogordo shall be carried out with the highest standard of diligence, efficiency, and stewardship. The BIDDER shall maintain full transparency with the OWNER regarding project progress, delays, disruptions, or other matters affecting scope, schedule, or cost.

Ethics and Integrity - The BIDDER shall conduct all dealings with honesty, integrity, and fairness. Any attempt to circumvent City procedures or improperly influence elected officials, in violation of the Governmental Conduct Act, the City Charter, or applicable ordinances, shall constitute a material breach of this Code.

Acknowledgment - By execution of this acknowledgment, the BIDDER affirms full understanding of this Code of Conduct and agrees that compliance is a material condition of performing work for the OWNER. The BIDDER further acknowledges that failure to comply may result in enforcement actions, including but not limited to removal from the project site, termination of the contract, suspension, or disqualification from future procurements.

The BIDDER acknowledges receipt of the City of Alamogordo Contractor Code of Conduct and affirms full understanding of its provisions.

By executing this acknowledgment, the BIDDER agrees that compliance with the Contractor Code of Conduct is a material condition of performing work for the OWNER. The BIDDER further agrees that any violation of this Code may constitute a breach of contract and may result in enforcement actions, including, but not limited to, removal from the project site, termination of the contract, suspension, or disqualification from future procurements.

This acknowledgment is binding upon the BIDDER, its officers, employees, agents, subcontractors, and representatives.

_____
Name of BIDDER

By:_____

Title:_____

State of _____)
)ss.
County of _____)

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

_____
Notary Public

My Commission expires _____, 20 _____.

SECTION 18

GENERAL CONDITIONS

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 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, the OWNER will execute and deliver the agreement to the CONTRACTOR

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 the 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 14.14

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.

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

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 the Contract Documents

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, 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 that may be 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: Contract Modification(s), Agreement, Addenda, Special Conditions, Instructions to BIDDERs, General Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and Detailed Drawings shall govern over General Drawings. Any Work that may reasonably be inferred from the 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 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 including irrigation infrastructure.

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:

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

4.7. 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.

4.8. 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 SUNCONTRACTOR 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

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

5.4. Coverage for liability arising out of the operation of independent Contractors.

5.5. Completed Operations Coverage.

5.6. Attachment of the Broad Form Comprehensive General Liability Endorsement.

5.7. 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.

5.8. 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.

5.9. 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.

5.10. 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

5.11. **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.

5.12. **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

5.13. **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.

5.14. **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.

5.15. **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.

5.16. **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).

5.17. **Additional Bonds and Insurance**

5.18. 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.

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.

6.8. 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

6.9. 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.

Subcontractors

6.10. 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.

6.11. 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.

6.12. 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.

6.13. 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

6.14. 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

6.15. 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

6.16. 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

6.17. 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

6.18. 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.

6.19. 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

6.20. 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

6.21. 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:

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

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

6.24. Other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

6.25. 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.

6.26. 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

6.27. 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

6.28. 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.

6.29. 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.

6.30. 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.

6.31. 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.

6.32. 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.

6.33. 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

6.34. 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

6.35. 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.

6.36. 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.

6.37. 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

6.38. 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

6.39. 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 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 therefor 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 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 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:

11.4. 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.

11.5. By mutual acceptance of a lump sum or unit prices.

11.6. 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.

11.7. 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

11.8. 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:

11.9. 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.

11.10. 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.

11.11. 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.

11.12. 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.

11.13. Supplemental costs including the following:

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

11.15. 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.

11.16. 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.

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

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

11.19. 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.

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

11.21. 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.

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

11.23. 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.

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

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

11.26. 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.

11.27. 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.

11.28. 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

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

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

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

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

11.33. 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

11.34. 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.

11.35. 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.

ARTICLE 12 CHANGE OF THE CONTRACT TIME

12.1. The Contract Time may only be changed by written approval from the OWNER. 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 OWNER 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 CONTRACTOR is ready for each Quality Assurance test and shall 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 email 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 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.

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 such data, satisfactory to OWNER, as will establish OWNER's title to the material and equipment and protect OWNER's interest therein, including applicable insurance. **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. OWNER will, within seven (7) days after receipt of each Application for Payment, except 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 twenty-one (21) days of the 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:

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

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

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

14.11. OWNER has been required to correct defective Work,

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

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

Substantial Completion

14.14. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall, in writing to OWNER, 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 and ENGINEER 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 therefor. 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.

14.15. 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

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

14.17. 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.

14.18. 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

14.19. Upon written notice from CONTRACTOR that the Work is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or

defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

Final Application for Payment

14.20. 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 1 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

14.21. 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 1 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 twenty-one (21) days after receipt thereof, pay CONTRACTOR the amount recommended by ENGINEER.

CONTRACTOR's Continuing Obligation

14.22. 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

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

14.24. 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

14.25. 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, 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, 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.

15.5. 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

15.6. 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 ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or if OWNER fails to pay CONTRACTOR any sum approved by ENGINEER within thirty (30) days of its approval and presentation, then CONTRACTOR may, upon seven (7) days written notice to OWNER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained. 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 15-4-11 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 15-4-12 NMSA 1978 (1988 Repl.) which reads in part, as follows:

A. As used in Section 15-4-11 NMSA 1978, ‘wages’, ‘scale of wages’, ‘wage rates’, ‘minimum wages’, and ‘prevailing wages’ include:

17.9. The basic hourly rate of pay, and

17.10. The amount of:

17.11. 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

17.12. 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.”

17.13. 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 15-4-11 NMSA 1978, or other sections or legislative acts incorporating Section 15-4-11 NMSA 1978 are concerned may be discharged by:

17.14. The making of payments in cash;

17.15. The making of contributions of a type referred to in (2a) above; or

17.16. 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 15-4-11 NMSA 1978, plus the amount referred to in this section."

17.17. 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.

17.18. 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:

17.19. 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.

1) The employee's full name and social security number need only appear on the first payroll on which employee's name appears.

2) 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.

17.20. 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

17.21. 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

17.22. 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

17.23. 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

17.24. 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

17.25. 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. The OWNER shall retain full operational control of the existing potable water system throughout the duration of the Project. The CONTRACTOR shall perform all Work in a manner that minimizes disruptions to service, water quality, pressure, and fire protection capabilities.

Fire Hydrants

18.2. The CONTRACTOR shall notify the Fire Department prior to taking any fire hydrant out of service and again immediately upon returning the hydrant to service. Hydrants that are out of service shall be clearly identified and secured to prevent use until service has been restored.

Valves

18.3. The OWNER shall be solely responsible for the operation of all OWNER-owned valves. The CONTRACTOR is expressly prohibited from operating, adjusting, or otherwise manipulating any such valves. The OWNER shall perform all valve operations required for the Work upon coordination with the CONTRACTOR.

Emergency Main Breaks

18.4. In the event of an emergency main break or other unplanned incident requiring immediate system isolation, the CONTRACTOR shall immediately notify the Utility Maintenance Division at (575) 439-4244. The OWNER shall perform all required shutoff or valve operations. The CONTRACTOR shall secure the site, protect the public, and await further instruction from the OWNER

Protection of Property and Utilities

18.5. The CONTRACTOR shall not unnecessarily interfere with or interrupt the services of any public utility located within or adjacent to the Project area. The CONTRACTOR shall take all necessary precautions to protect underground and above-ground facilities, including conduit, cables, pipes, water mains, sewers, gas lines, trees, monuments, traffic control devices, power and communication lines, and other structures.

The CONTRACTOR shall give all affected public utilities written notice at least forty-eight (48) hours prior to commencing Work that may interfere with utility services or City-owned

facilities. If a utility does not cooperate in protecting its property, the CONTRACTOR shall immediately notify the ENGINEER.

The CONTRACTOR shall locate utilities in advance of construction to allow the utility owner time to raise, lower, realign, or remove facilities if necessary. If existing utilities conflict with the Work, the ENGINEER may order line or grade adjustments to avoid interference, provided such changes do not materially affect the Work.

Restoration of Damaged Property

18.6. The CONTRACTOR shall restore, at its own expense, any damage to public, private, or City-owned property for which it is directly or indirectly responsible. Restoration shall return the property to a condition equal to or better than that existing before the damage occurred.

If the CONTRACTOR refuses or fails to promptly make required restoration, the OWNER may perform the work and deduct all associated costs from amounts due or to become due to the CONTRACTOR. The CONTRACTOR shall notify its insurance carrier of all property damage claims without delay.

Traffic Control Devices

18.7. The CONTRACTOR shall not remove, realign, or adjust any official City traffic control device. The CONTRACTOR shall give the ENGINEER at least forty-eight (48) hours' notice of any device requiring relocation. The OWNER will perform such relocations as soon as practical.

Abandoned Utilities

18.8. Unless otherwise specified, the CONTRACTOR shall remove interfering portions of utilities shown on the Drawings as "abandoned" or "to be abandoned in place." Abandoned water mains shall be removed or, at a minimum, properly capped. All costs associated with removal shall be incidental to the Work. Removed materials shall remain the property of the OWNER or utility company, as directed by the ENGINEER.

The CONTRACTOR shall contact the affected utility company at least forty-eight (48) hours before excavating near any utilities identified as abandoned or to be abandoned to confirm that abandonment has been completed.

Location of Existing Utilities

18.9. Public utilities shall be responsible for providing their facilities' horizontal and vertical alignment. Where field verification is required, the utility shall complete it in a timely manner.

Utilities that interfere with permanent Work or fall within the trench prism, as defined by OSHA, will be relocated, altered, or reconstructed by others. Alternatively, the ENGINEER may order modifications to the Work to avoid conflict. Costs for such changes will be paid under applicable Bid Items.

Unknown Utilities

18.10. If previously unknown utilities are discovered during construction, or if known utilities are found in materially different locations than shown on the Drawings, the CONTRACTOR shall immediately notify the ENGINEER. If additional work is required to maintain, relocate, or protect such utilities, it shall be compensated as follows:

- If the utility is within the trench prism or conflicts with permanent Work, it shall be relocated or supported at the OWNER's expense.
- If the utility is outside the Work prism but requires protection, support, or adjustment due to CONTRACTOR's operations, the CONTRACTOR shall perform such work at no additional cost.

Responsibility of the CONTRACTOR

18.11. 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 relocated by others 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.

Delays Caused by Failure to Relocate Utilities

18.12. If relocation or removal of utilities by others causes a delay to the Contractor's Work, the Contractor shall be entitled to an extension of Contract Time as determined by the ENGINEER. No additional compensation shall be granted unless expressly provided in the Contract.

To minimize delay, the ENGINEER may authorize the Contractor to omit portions of the Work affected by unresolved utility conflicts. The Contractor shall complete such omitted portions immediately after the relocation. Mobilization and demobilization costs associated with the omitted Work shall be compensated in accordance with the Contract.

ARTICLE 19 DIGITAL VIDEO RECORDING

Pre-Construction Video Documentation

19.1. Prior to initiating any construction operations, the CONTRACTOR shall perform a continuous digital video recording of the entire project site, including its full length and width. The recording shall also include all areas that may be disturbed or impacted during the Work, such as material storage zones, employee parking areas, and equipment storage locations.

Technical Requirements

19.2. The digital video documentation shall meet the following minimum standards:

- Recorded in full color, at a resolution no less than 1920 x 1080 pixels and at a frame rate of 60 frames per second.
- Conducted between 10:00 a.m. and 2:00 p.m. under conditions of full sun exposure, unless otherwise approved in writing by the OWNER.

- A date stamp shall appear on each frame of the recording, clearly identifying the actual date of capture.

Approval of the video documentation must be obtained from the OWNER prior to the commencement of any clearing, grubbing, or earth-disturbing operations.

Submission of Documentation

19.3. The CONTRACTOR shall submit the completed digital video recording to the OWNER on a properly labeled flash drive (or other approved digital storage medium) for review and inclusion in the project record. The recording shall remain the OWNER's property and may be used for reference in the event of claims, disputes, or verification of existing conditions.

Compensation

19.4. All costs associated with preparing, submitting, and approving the video documentation required under this Article shall be considered incidental to the Work. No separate payment will be made unless specifically provided in the Special Provisions.

ARTICLE 20 SAFETY

General Duty of Safety

20.1. The CONTRACTOR shall maintain a safe work environment for all employees, subcontractors, and members of the public affected by the Work. Safety compliance is a material obligation of this Contract. The OWNER’s Safety Staff shall meet with the CONTRACTOR’s designated Safety Representative(s) prior to commencement of Work, or as soon as practicable thereafter, to review the OWNER’s safety expectations, reporting requirements, and enforcement protocols.

Minor Deficiencies

20.2. Minor safety deficiencies observed by the OWNER’s Safety Staff shall be reported to the CONTRACTOR’s Safety Representative for immediate correction. Examples include, but are not limited to:

- Inappropriate or missing protective footwear;
- Use of an incorrect high-visibility vest color in designated areas such as railroad rights-of-way.

Notification may be made verbally or by phone at the time of observation; however, all such deficiencies shall be documented in writing as soon as practical. The examples listed above are illustrative and not exhaustive.

Serious Deficiencies

20.3. Serious safety deficiencies that could reasonably be expected to result in serious physical injury or death shall be subject to immediate corrective action. The OWNER’s Safety Staff is authorized to direct an immediate stop-work order until the hazard has been mitigated to the OWNER’s satisfaction. Examples include, but are not limited to:

- Excavations without compliant egress routes under OSHA Standards;
- Excavations in Class C soils without engineered protective systems;
- Personnel working under suspended or heavy equipment without appropriate head protection.

All such deficiencies shall be documented in writing, and the CONTRACTOR's Safety Representative shall be notified both by phone and in writing as soon as practicable following the observation.

Reporting and Documentation

20.4. All safety deficiencies, minor and serious, shall be documented in writing by the OWNER's Safety Staff. Written reports shall be transmitted to the OWNER's Engineering Department and to the CONTRACTOR's Safety Representative. Documentation shall form part of the **permanent project record.**

Authority of the OWNER

20.5. As the contracting authority and primary employer on all City projects, the OWNER retains sole discretion to determine whether a deficiency is classified as minor or serious. These classifications, and the enforcement measures applied, shall be discussed with the CONTRACTOR's Safety Representative at the initial safety meeting and may be further clarified during the course of the Work.