INVITATION TO BID
BID # 2016-548

Lovers Lane Concrete Box Culvert

BID OPENING DATE/TIME/PLACE:
Thursday, January 7, 2016, 3:30 P.M.
City of Aztec Commission Room
201 W Chaco
Aztec, NM 87410

NON-MANDATORY PRE-BID MEETING
Tuesday, December 29, 2015, 10:00 A.M.
City of Aztec Public Works Department
610 Western Drive

For further information contact:
Kathy Lamb
Finance Director
City of Aztec
Phone: 505-334-7653
Fax: 505-334-7649
email: klamb@aztecnm.gov

Table of Contents

INVITATION TO BID 3
- BID NOTICE 3
- ACKNOWLEDGMENT OF RECEIPT FORM 4
- BID REQUIREMENTS 5

BID FORMS 11
- BID SUBMITTAL 11
- BIDDER'S REPRESENTATIONS 13
- BIDDER'S CERTIFICATION 13
- BASIS OF BID 15
- CONTRACTOR'S LIST OF SUBCONTRACTORS 17
- BID BOND 19
- RESIDENT CONTRACTOR PREFERENCE 21
- STATEMENT OF BIDDERS QUALIFICATIONS 23

CONTRACT FORMS 25
- GENERAL CONDITIONS 25
- NOTICE OF AWARD 89
- CONSTRUCTION AGREEMENT 90
- PERFORMANCE BOND 93
- LABOR AND MATERIAL PAYMENT BOND 95
- CERTIFICATE OF LIABILITY INSURANCE 97
- NOTICE TO PROCEED 98
- CERTIFICATE OF SUBSTANTIAL COMPLETION 101
- RELEASE AND WAIVER OF LIENS 102
- SUBCONTRACTOR'S RELEASE AND WAIVER OF LIENS 103
- CONTRACTOR'S STATEMENT CONCERNING CLAIMS 104

APPENDIX A: WAGE RATES 105

APPENDIX B: PLAN SET 110

APPENDIX C: TECHNICAL SPECIFICATIONS 111

INVITATION TO BID

BID NOTICE

City of Aztec, NM – Lovers Lane Concrete Box Culvert
BID # 2016-548

The City of Aztec is accepting bids for the Lovers Lane Concrete Box Culvert replacement. Documents and specifications may be obtained online by accessing the City's purchasing webpage through http://www.aztecnm.gov/purchasing/office.htm or by contacting Kathy Lamb at (505) 334-7653 klamb@aztecnm.gov

A NON- MANDATORY Pre-Bid meeting will be held on Tuesday, December 29, 2015 at 10:00 a.m. at the Public Works Facility, 610 Western Drive, Aztec, NM.

Sealed bids will be received by the City of Aztec at 201 W. Chaco, Aztec, New Mexico, 87410. Bids will be opened on Thursday, January 7, 2016 at 3:30 p.m. in the City Commission Room at City Hall.

Publication Date: December 21, 2015

ACKNOWLEDGMENT OF RECEIPT FORM

In acknowledgment of receipt of BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT, the undersigned agrees that he/she has received a the bid document copy from the City's website.

The City will provide additional bid documents electronically upon receipt the completed acknowledgement form.

NON-MANDATORY PRE-BID: Tuesday, December 29, 2015,10:00 AM City of Aztec Public Works Building, 610 Western drive, Aztec NM 87410

The acknowledgment of receipt should be signed and returned as directed below no later than Wednesday, December 30, 2015. Only potential Bidders/Offerors who elect to return this form will receive copies of all future communications, relating to, and including amendments to the Bid if issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

EMAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to document this Bid/RFP

Firm does/does not (circle one) intend to respond to BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT**.**

If firm does not intend to reply, please give a brief reason for not responding. _____

_____

_____

Return to:
Kathy Lamb
Finance Director
City of Aztec
201 W Chaco
Aztec, New Mexico 87410
Telephone Number: 505-334-7653
Fax Number: (505) 334-7649
klamb@aztecnm.gov

Faxed or emailed copies of this form will be accepted.
Faxed or emailed **BID** responses **will not** be accepted.

BID REQUIREMENTS

1. INSTRUCTION TO BIDDERS

The City of Aztec, New Mexico ("OWNER") is requesting bids for the project as announced in the Invitation to Bid.

2. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

Bidders shall carefully examine the Contract documents and the maintenance sites to obtain first-hand knowledge of existing conditions. Bidders will not be given extra payment for conditions, which can be determined by examining the site and contract documents. It is mutually agreed that the Bidder has made the examinations, investigations and test required herein and has made provisions as to the cost in his bid.

Before submitting his Bid, each Bidder must (a) examine the Contract Documents thoroughly; (b) visit the site to familiarize himself with local conditions that may in any manner affect performance of the Work; (c) familiarize himself with federal, state, and local laws, ordinances, rules, and regulations affecting performance of the Work; and (d) carefully correlate his observations with the requirements of the Contract Documents.

3. QUESTIONS

Submit all questions about the project to the OWNER by the date and time identified in the Invitation to Bid. Corrections or clarifications shall be made by addendum. Oral clarifications will not be binding.

4. PREPARATION OF BIDS

Bids shall be submitted on the forms provided. Bid Forms must be completed in ink. The grand total of the Contract must be stated on the Bid Form in both writing and numerals; in case of an error, the price in words, unless obviously incorrect, shall govern.

Alternate proposals will not be considered unless called for.

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 and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, his title must appear under his 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 CONTRACTOR shall be licensed under the proper classification(s) as outlined under the State of New Mexico's Construction Industries Division Rules and Regulations (latest edition). A CONTRACTOR not having the minimum license at the time of Bid opening shall be considered a non-responsive Bidder and their Bid will be rejected.

Each addendum shall be made a part of the Contract Documents to the same extent as though contained in the original documents and itemized listings thereof. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

Pursuant to Section 13-1-108 NMSA 1978, the total amount of the bid shall exclude the applicable state gross receipts tax or applicable local option tax. The OWNER will pay for any taxes due on the Contract and will pay any increase in applicable which become effective after the date the Contract is entered into in addition to the Bid total.

Taxes shall be shown as a separate amount in each billing or request for payment made under contract and shall separately identify each tax being billed.

5. SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the invitation to Bid. Bids shall be submitted in an opaque sealed envelope, addressed to the OWNER, marked with the Bid number, Project title, and opening date. If forwarded by mail, the sealed envelope containing the Bid may enclosed in another envelope addressed to the OWNER at the address state in the Advertisement for Bids. The City of Farmington reserves the right to accept or reject any or all Bids.

Bids received after the date and time in the Invitation to Bid will be returned to sender unopened.

6. RESIDENT CONTRACTOR PREFERENCE

The New Mexico Procurement Code, N.M.S.A. 1978, §§ 13-1-21 et seq. (Repl. 1992), as amended, provides for a 5% preference which may be applied to the bids of qualified resident businesses and manufacturers. N.M.S.A. 1978, § 13-1-21. Any Bidder desiring to qualify for a preference pursuant to this section must supply a CURRENT preference number along with the Bid. However, Bidders should not attempt to include the preference in the bid. The City of Aztec shall adjust bids of businesses and manufacturers who qualify for a preference at the time of evaluation and award.

Per Senate Bill 1, signed by Governor Martinez on October 5, 2011, all resident contractors, wishing to obtain in-state preference, all required to obtain a preference number with the New Mexico Department of Taxation and Revenue (TRD). All In State Preference Numbers issued prior to January 1, 2012 are invalid. It will be the sole responsibility of the Bidders requesting consideration for the Resident Preference to obtain approval and a certification from the TRD prior to the bid opening date.

In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a new resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with the proper documentation to renew their certificate.

Attached is one form to be completed and returned with your bid if your firm will qualify for this preference. The veteran's preference will not be extended without the certificate from TRD and the attached Resident Veterans Preference Certification.

This preference is separate from the in-state preference and is not cumulative with that preference.

7. BID SECURITY

Bid security in the amount of 5% of the amount of the bid shall accompany the bid proposal and must be in the form of a certified or bank cashier's check made payable to OWNER or a bid bond issued by a surety licensed to conduct business in the State of New Mexico and named in the current list of "Surety Companies Acceptable on the Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

The Bid Security of the successful Bidder will be retained until he has executed the Agreement and furnished the required Contract Security, whereupon it will be returned; if he fails to execute and deliver the Agreement and to furnish the required Contract Security within 10 days of receipt of 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 any Bidder whom OWNER believes to have reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the executed Agreement is delivered by OWNER to CONTRACTOR and the required Contract Security is furnished or the sixty-first day after the Bid opening.

Bid Security of other Bidders will be returned within seven days of the Bid opening.

8. SUBCONTRACTORS AND MANUFACTURERS

Pursuant to Sections 13-4-31 through 13-4-43 NMSA 1978) , the Bidder shall submit the following information for each Subcontractor who will perform work or labor or render service to the CONTRACTOR in or about the construction Project in an amount in excess of the listing threshold specified in the Invitation to Bid:

Name of the Subcontractor;
City of County of the Subcontractor;
Nature of the work which will be done by the Subcontractor

The listing threshold is $5,000.

The Bidder may be required to establish the reliability and responsibility of the proposed Subcontractors or of any manufacturer to furnish an perform the work in accordance with the Contract Documents and completion schedule, and may also be required to require performance and payment bonds of some or all Subcontractors in conformance with Sec. 13-4-37 NMSA 1978.

9. WITHDRAWAL OF BIDS

Any Bid may be withdrawn prior to the scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid after the Bid opening until the time for award stipulated below has expired. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the bidder.

10. QUALIFICATIONS OF BIDDERS

To demonstrate his qualifications for the Project,

each Bidder must be prepared to submit within five days of OWNER'S written request a written statement of Bidder's Qualifications on the form contained herein or as prescribed by the OWNER. The OWNER reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the OWNER that such Bidder is properly qualified to carry out the obligations of the of the Agreement and to complete the work contemplated by it; and such rejection shall not give rise to a cause of action against the OWNER or Engineer, or impose a requirement upon the OWNER or Engineer to divulge the information upon which such rejection is based.

11. AWARD OF CONTRACT

All Bids shall remain open for sixty (60) days after the day of the Bid opening; but OWNER may, in his sole discretion, release any Bid and return the Bid Security prior to that date.

OWNER reserves the right to reject any and all Bids and waive any and all informalities and the right to disregard all nonconforming or conditional Bids or counter proposals. The City may not award all projects only some of the projects depending on bid amounts and the available funding for the projects.

In evaluating Bids, OWNER shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices if requested in the Bid forms. He may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as specified in the Special Conditions. He may conduct such investigations as he deems necessary to establish the responsibility, qualifications, and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the Work in accordance with the Contract Documents to OWNER's satisfaction within the prescribed time. OWNER reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to OWNER's satisfaction.

If a contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interest of the Project.

The acceptance of a Bid will be evidenced by a Notice of Award in writing signed by a duly authorized representative of the OWNER and delivered to the Bidder whose Bid is accepted, in the manner provided for giving written notices (reference paragraph 13.3 of the General Conditions).

If the contract is to be awarded, OWNER will give the apparent successful Bidder a Notice of Award within sixty days after the day of the Bid opening.

12. PERFORMANCE AND PAYMENT BONDS

A performance bond and a labor and material payment bond, each in the amount of 100 percent of the Contract Price, with a corporate surety approved by the OWNER, will be required for the faithful performance of the Contract.

Attorneys-in-fact who sign the payment bond and performance bond must file with each bond a dated, certified and effective copy of their power of attorney.

13. INSURANCE REQUIREMENTS (CONSTRUCTION OR INSTALLATION ONLY)

Contractor shall carry and maintain insurance in the following amounts:

General Liability - $1,000,000 CSL (Combined Single Limits)
Auto Liability - $1,000,000 CSL (Combined Single Limits)
Workers Compensation – Statutory limits pursuant to the New Mexico Workers Compensation Act.

The certificate shall specifically provide that the coverage afforded under the policy or policies will not be cancelled or be materially changed until prior written notice has been given to the City. The Contractor shall furnish a certificate of insurance showing that the City is additionally insured prior to commencing work.

14. EXECUTION OF CONTRACT

A City of Aztec Business License is required of any business conducting business within the City (Aztec City Code Sec 11-2-1). A Contract will NOT be executed until the CONTRACTOR is in compliance with Aztec City Code.

The CONTRACTOR will execute and return to the OWNER the Agreement and any required bonds and certificates of insurance within 15 days after receipt of the Notice of Award.

The CONTRACTOR shall not proceed with any construction activities other than ordering materials, supplies and equipment, until the required bonds and certificates of insurance are delivered to the OWNER, and OWNER acknowledges in writing their receipt.

No progress payments shall be made to CONTRACTOR until the required bonds and certificates of insurance are delivered to the OWNER.

15. PRE-BID CONFERENCE

The purpose of this conference is to answer any questions, as might arise, with respect to the Bidding requirements and execution of this Contract.

Questions resolved at this meeting will be included in the minutes and will be posted to the City of Aztec website www.aztecnm.gov

If a mandatory pre-bid conference is identified in the Invitation to Bid, bids received by Offerors who did not attend and sign the pre-bid conference attendance form will be returned unopened.

16. CONTRACT TIME – LIQUIDATED DAMAGES

The number of days for the substantial completion of Work (the Contract Time) and/or final completion is set forth in the Bid Proposal and will be included in the executed Construction Agreement. Any provisions for liquidated damages are set forth in the Contract Documents.

17. QUANTITIES

The quantities set forth in the Bid Form are estimated quantities on which Bids will be compared and which will be the basis for the award of Contract. Payment will be made for the Work actually performed. The OWNER reserves the right to increase or decrease quantities by any reasonable amount to suit the best interest by the OWNER.

18. COLLUSION-GENUINE BID

The Bidder, by submitting a Bid, certifies that the Bid is genuine and is not 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 collision to secure himself an advantage over any other Bidder.

19. PREFERENCES AND STANDARDS FOR PROCESSES, MATERIALS AND EQUIPMENT

Unless specified in the Contract Documents, the OWNER has no preference for any process, type of equipment or kinds of material but will consider all processes, types of equipment or kinds of material offered which meet specifications on an equal competitive basis if they are in fact equal to those specified and will accomplish the purpose intended. The OWNER reserves the right to be the sole judge as to whether or not a different process, type of equipment or kind of material offered is in fact the equal to that specified.

20. PROJECT FINANCE

Any Contract awarded under this invitation for Bid shall be subject to the appropriation of funds by the OWNER's City Commission.

21. WAGE RATES

The Bidder's attention is directed to the fact that wages to be paid on this project shall not be less than the prevailing wage rates as listed by the New Mexico State Office of Labor Commissioner and (where applicable) the prevailing Federal Wage Rate Decision listed by the U.S. Department of Labor and in effect at the time of this contract. It shall be the successful Bidder's responsibility to inform himself thoroughly of all state, federal, and local laws and statutes pertaining to the employment of labor, the freedom of organization, and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, sex, color, national origin, or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

~~22. FEDERAL ASSISTED CONSTRUCTION CONTRACTS~~

~~NOTICE OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES~~

~~Bidders are cautioned as follows: By signing the Contract for which this Bid is solicited, the Bidder will be deemed to have signed and agreed to the provisions of the "Certification to Non-segregated Facilities" as contained in the Specifications for this Project.~~

~~NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS~~

~~A certification of Non-segregated Facilities, as required by the May 28, 1968 order (33 F.R. 7808, May 28, 1968; 41 CFR Part 60-1, et seq) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a federally assisted construction contract exceeding~~

~~Ten Thousand Dollars ($10,000.00) which is not exempt from the provisions of the Equal Opportunity clause.~~

~~CONTRACTORS receiving federally assisted construction contract awards exceeding Ten Thousand Dollars ($10,000.00) which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective Subcontractors for supplies and construction contracts where the subcontracts exceed Ten Thousand Dollars ($10,000.00) and are not exempt from the provisions of the Equal Opportunity clause.~~

~~Certification by Bidder regarding Equal Employment Opportunity must be submitted with each Bid.~~

23. 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, sex or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, 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 selecting for training, including apprenticeship.

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

The CONTRACTOR will, in all solicitations or advertisements for employment placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

The CONTRACTOR will send to each labor union or representative of workers with which he has collective bargaining agreements or other contracts or understandings, a notice advising the labor union or worker's representative of the CONTRACTORS' commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to CONTRACTOR's books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor.

The CONTRACTOR will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

24. COMPLIANCE WITH FEDERAL REGULATIONS

The CONTRACTOR agrees to comply with any Federal Statutes or Regulations which are applicable to this Project including, but not limited to, the following:

All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment, and in particular:

The provisions of Title 29 of the Office of the Secretary of Labor of the United States Government, Part 3, entitled "Contractors and Subcontractors on Public Building or Public Work Financed in whole or in part by loans or grants from the United States" (29 CFR Part 3);

The provisions of 29 CFR Part 5 entitled "Labor Standard Provisions Applicable to Contracts

Governing Federally Financed and Assisted Construction" as well as the “Labor Standard Provisions Applicable to Non-construction Contracts Subject to Contract Work Hours and Safety Standards Act.”

Those concerning relocation and related payments to in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 et seq;

The National Environmental Policy Act of 1969, as amended (42 USC 4231 et seq);

The Clean Air Act, as amended (42 USC 1857-1858 a);

The Federal Water Pollution Control Act, as amended (33 USC 1251-1376);

The National Historic Preservation Act of 1966, as amended (16 USC 470 et seq);

The Wild and Scenic Rivers Act (16 USC 1271-1281);

The Endangered Species Act of 1973, as amended (16 USC 1531 et seq);

The Historic Sites, Buildings and Antiquities Act, as amended (16 USC 461 et seq);

The Americans with Disabilities Act of 1990 (P.L.101-336, July 26, 1990), and any regulations adopted pursuant thereto;

The National Flood Insurance Act of 1968, as amended.

The National Pollutant Discharge Elimination System Regulations for Storm Water Discharges, 40 CFR Parts 122,123 and 124.

25. SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

In order to protect the lives and health of his employees, the CONTRACTOR shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act as amended, commonly known as the Construction Safety Act and also known as the Williams-Steiger Occupational Safety and Health Act of 1970, together with the regulations promulgated in 29 CFR, Parts 1901 through Parts 1919.

26. WARRANTIES

The Bidder shall warrant and guarantee all workmanship performed by the Bidder and materials supplied by the Bidder for a minimum period of one (1) year from purchase date or date of Substantial Completion, unless otherwise specified in the specifications.

27. BID OPENING PROCEDURE

The person or persons opening the bids will adhere to the following procedure:

Announce the name of the bidder and the number of the bidder's N.M. Contractor's license.

Check for bid bond or bid security.

Check for acknowledgment of addendums.

Check for proper signature on bid form.

Check other requirements on bid form.

Read Bid aloud

If any of the above requirements have not been met, the bid shall be read after the deficiency or deficiencies have been accounted and noted.

28. PROTEST DEADLINE

Any protest by a Bidder must be timely and in conformance with Section 13-1-172, NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Bidders shall begin on the day following the City’s written notification to all responding Bidders. Protests must be written and must include the name and address of the protestor and the number assigned to this Bid by the City. It also must contain a statement of grounds for protest including appropriate supporting exhibits. The timely protest must be delivered to:

Purchasing Specialist
City of Aztec
201 W. Chaco
Aztec, NM 87410

29. DEFINED TERMS

Terms used in these Instructions to Bidders have the meanings assigned to them in the General Conditions unless otherwise defined in the Special Conditions.

BID FORMS

BID SUBMITTAL

BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

_____

COMPANY NAME / MAILING ADDRESS / CITY / STATE / ZIP (please print)

_____

CONTACT PERSON (please print) EMAIL TELEPHONE

IMPORTANT - BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE BID NUMBER AND OPENING DATE CLEARLY INDICATED ON THE FRONT OF THE ENVELOPE. EMAILED OR FAXED BIDS WILL NOT BE ACCEPTED. SUBMITTING A "NO BID" IS NOT REQUIRED TO BE KEPT ON THE CITY'S BIDDERS LIST.

NON-MANDATORY PRE-BID: Tuesday, December 29, 2015, 10:00 AM City of Aztec Public Works Building, 610 Western drive, Aztec NM 87410

Sealed bids will be received until **Thursday, January 7, 2016, 3:30 P.M. MDT** and then opened at the **City of Aztec City Commission Room** and read aloud. This bid is subject to the Purchase Order Terms and Conditions, Bidding Requirements and Specifications.

If a corporation, state of incorporation: _____

NEW MEXICO TAX ID NO: _____ FEDERAL TAX ID NO.:_____
NEW MEXICO CONTRACTORS LICENSE NO.: _____
NEW MEXICO CONTRACTORS LICENSE CLASSIFICATIONS:
_____

NEW MEXICO DEPT OF WORKFORCE SOLUTIONS – PUBLIC WORKS REGISTRATION NO.:
_____

CITY OF AZTEC BUSINESS LICENSE NO: _____
Current City of Aztec Business License not required at time of bid. Successful bidder will be required to obtain City of Aztec Business License prior to execution of contract.

In-State Preference will be applied only to those in-state certified businesses that have completed the following:

Bidder has received certification from the State of New Mexico for Resident Business Certification. Bidder has been issued Certification # _____and is therefore eligible for the 5% preference. In-state certification approval is required at the time of the proposal opening to be eligible for in-state preference.

Resident Veterans Preference will be applied only to those bidders who have completed the following along with the Resident Veterans Preference Certification form included in this RFP:

Bidder has received certification from the State of New Mexico for Resident Veterans Preference. Offeror has been issued Certification #_____. Bidder must include their State of New

Mexico certificate with their proposal. Resident veterans preference certification approval is required at the time of the proposal opening to be eligible for resident veterans preference.

Guaranteed pricing is requested; please submit pricing guaranteed for 60 DAYS from the date of notice of award. Notice of award shall occur within 60 days of bid opening date. The City of Aztec reserves the right to accept any bid, in whole or in part, and to reject any or all bids if it is deemed in the best interest of the City to do so. The City of Aztec reserves the right to waive any formality or informality in the process of awarding this bid.

The items as specified herein are not to be taken as restrictive, but rather are to establish a standard for services desired. Any deviation in the attached pages should be specifically set forth in your bid offer. Except as specified as Sole Source, any brand name used is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Where there is more than one part to an item, all parts must be bid to receive Board consideration.

The bidder agrees the work will be substantially completed **by April 15, 2016 or 60 days** from the date of the Notice to Proceed (whichever date comes first), as may be modified by change order, and work will be completed and ready for final payment by **April 29, 2016 or 10 days following substantial completion** from the date of the Notice to Proceed, as may be modified by change order.

The bidder agrees liquidated damages will be paid to the Owner for each day beyond substantial completion expiration in the amount of **$2,000.00 per calendar day** and **$250.00 per calendar day** for completion of remaining work and readiness for final payment beyond completion expiration date.

The Proposal guarantee shall be **__5%_** of the total amount bid. Guarantee included with bid is (mark one): _____ Bid Bond _____ Cashier's Check Payable to City of Aztec

Subcontractor's listing threshold **$5,000**

Bidder must check the appropriate box below:

If applicable, BIDDER ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENT(S):

Addendum No._____ Dated _____ Addendum No. _____Dated _____

Addendum No. ____ Dated _____ Addendum No. _____Dated _____

BIDDER'S REPRESENTATIONS

A. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

B. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

C. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

I . The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

BIDDER'S CERTIFICATION

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the e execution of the Contract.

To be a valid proposal, Bidder must sign here:

_____ Title:_____

BASIS OF BID

BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

TO: City of Aztec, New Mexico Attn: Purchasing Office
201 West Chaco
Aztec, New Mexico 87410

The undersigned hereby proposes to perform all work for the City of Aztec – BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT. Advertisement inviting bids dated December 21, 2015

The Contract Documents including Special Conditions and Plans and any Addenda. All of which are incorporated herein and made a part hereof; and to perform said work in accordance with and at the rates and prices (or lump sum bid) shown in the following bid schedule: (Each item or its alternate must be bid. The cost of any work added or deducted from the following estimated quantities shall be computed at the unit prices bid.)

The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principal or principals is or are named herein and that no other persons or firms than herein mentioned have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid or proposal; and that it is in all aspects fair and in good faith without collusion or fraud.

The Undersigned agrees that, upon written notice of acceptance (Notice of Award) of this proposal mailed or otherwise furnished within 60 days after the date of opening proposals, he or she will within 15 days after receipt of said notice, execute and return to the City of Aztec, New Mexico the prescribed construction contract and any required bonds and certificates. The receipt of a facsimile transmission (FAX) of the Notice of Award, by undersigned shall constitute receipt as provided herein.

The bidder agrees the work will be substantially completed **by April 15, 2016 or 60 days** from the date of the Notice to Proceed (whichever date comes first), as may be modified by change order, and work will be completed and ready for final payment by **April 29, 2016 or 10 days following substantial completion** from the date of the Notice to Proceed, as may be modified by change order.

The bidder agrees liquidated damages will be paid to the Owner for each day beyond substantial completion expiration in the amount of **$2,000.00 per calendar day** and **$250.00 per calendar day** for completion of remaining work and readiness for final payment beyond completion expiration date.

The undersigned understands that immediately upon, or up to 10 days following receipt by the OWNER of construction contract signed by the undersigned, the OWNER may issue a Notice to Proceed. The receipt of a facsimile transmission (FAX) of the Notice to Proceed by undersigned shall constitute receipt as required herein.

BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

ITEM #	DESCRIPTION	UNIT	QUANTITY	TOTAL
1	Construct Concrete Box Culvert	LS	1	

Total Written Amount of Bid (Excluding Tax)

_____

_____
SIGNATURE OF BIDDER

_____
Printed Name of Bidder

_____
Title

_____
Telephone Number

_____
Fax Number

_____
Email

(SEAL) If Bid is by a Corporation

Attest: _____

Title: _____

CONTRACTOR'S LIST OF SUBCONTRACTORS

PROJECT: BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

BIDDER must list all Subcontractors whose listing is required pursuant to the New Mexico Subcontractors Fair Practices Act and estimated work exceeds the threshold amount of Five Thousand and no/100 Dollars ($5,000.00).

Company Name:
Address: City: State: Zip:
E-mail Address: License Number:
Phone Number: Fax Number:
Work to be performed: Contract Over $ 60,000: ☐ YES ☐NO

Company Name:
Address: City: State: Zip:
E-mail Address: License Number:
Phone Number: Fax Number:
Work to be performed: Contract Over $ 60,000: ☐ YES ☐NO

Company Name:
Address: City: State: Zip:
E-mail Address: License Number:
Phone Number: Fax Number:
Work to be performed: Contract Over $ 60,000: ☐ YES ☐NO

Company Name:
Address: City: State: Zip:
E-mail Address: License Number:
Phone Number: Fax Number:
Work to be performed: Contract Over $ 60,000: ☐ YES ☐NO

Company Name:
Address: City: State: Zip:
E-mail Address: License Number:
Phone Number: Fax Number:
Work to be performed: Contract Over $ 60,000: ☐ YES ☐NO

ADDITIONAL SHEETS LISTING SUBCONTRACTORS MAY BE ATTACHED IF NECESSARY.

NOTICE TO BIDDER

List only one subcontractor for each category of work.
FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL MAKE THE BID NON–RESPONSIVE and the Bid will be rejected.

CONTRACTOR:

FIRM:_____

By:_____

Title:_____

Date:_____

SUBCONTRACTOR FAIR PRACTICES ACT COMPLIANCE

This Public Works Project is subject to the provisions of the Subcontractors Fair Practices Act (Chapter 18, Laws of 1988; Sections 13-4-31 through 13-4-43 NMSA 1978) as it may be amended.

The listing threshold is : $5000

List of Subcontractors Required: The Bidder shall define the categories of subcontractors in the bid and shall list on the Contractor's List of Subcontractors, no more than one subcontractor for each such category, PROVIDED HOWEVER, that such listing shall not include subcontractors whose work does not exceed the threshold dollar amount given in the subparagraph A, above. Such list shall give the name and location of the place of business of each subcontractor under subcontract to the Bidder who will perform work or labor or render service to the Bidder in an amount exceeding the threshold stated in subparagraph A.

All subcontractors whose estimated work exceeds the threshold shall be listed at the time the Bid is submitted to OWNER.

The apparent low Bidder may allow a subcontractor that exceeds the threshold amount to be voluntarily assigned or transferred or to be performed by anyone other than the original subcontractor listed in the original bid only if the OWNER, gives prior written approval.

No Bidder whose Bid is accepted shall sublet or subcontract any portion of the Work in an amount exceeding the threshold amount given in subparagraph A, above, where the original bid did not designate a subcontractor, unless:

the Bidder received no bid for that category (note: the Bidder must designate on the list of subcontractors required in subparagraph B, above, that "no bid was received"), or

the work is pursuant to a Change Order that causes changes or deviations from the original Contract.

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

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we _____ hereinafter called the Principal, as Principal, and the _____ of _____ , a corporation duly organized under the laws of the State of _____ hereinafter called Surety, as Surety, are held and firmly bound unto the City of Aztec, hereinafter called the Obligee, in the sum of dollars, for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for:

The work to be performed under this contract shall consist of furnishing all professional service, labor, equipment, and materials necessary to complete Lovers Lane Concrete Box Culvert.

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into an Agreement with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Agreement and for the prompt payment of labor and material furnished in the prosecution thereof or in the event that either the Obligee shall be unable to accept the bid of the Principal as a result of acts or omissions of the principal or the failure of the Principal to enter such Agreement and give such bond or bonds, if the Principal shall pay to the Obligee the difference, not to exceed the amount hereof, between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

SIGNED AND SEALED this _____ day of _____ A.D., 2016

_____
WITNESS

_____
Principal

By: _____

Title: _____

_____
Street Address

_____
Mailing Address

_____
City, State and Zip Code

_____
Phone Number

SURETY

_____

BY _____

WITNESS

_____

_____
STREET ADDRESS

_____
MAILING ADDRESS

_____
CITY/STATE AND ZIP CODE

_____

PHONE NUMBER

CERTIFICATE OF SURETY ON BID BOND

_____ , Surety on the Bid Bond dated the _____ day of _____ , 2016, wherein is Principal and the City of Aztec as Obligee does hereby rectify that Surety is duly authorized to transact business as a corporate surety in New Mexico, that as Surety it has complied with all applicable laws of the State of New Mexico.

Witness, my hand and seal this _____ day of _____, 2016

_____
Surety

By _____

Title _____

THIS BOND MUST BE ACCOMPANIED BY POWER OF ATTORNEY, EFFECTIVELY DATED

RESIDENT CONTRACTOR PREFERENCE

The New Mexico Procurement Code, N.M.S.A. 1978, §§ 13-1-21 et seq. (Repl. 1992), as amended, provides for a 5% preference which may be applied to the bids of qualified resident businesses and manufacturers. N.M.S.A. 1978, § 13-1-21. Any Bidder desiring to qualify for a preference pursuant to this section must supply a CURRENT preference number along with the Bid. However, Bidders should not attempt to include the preference in the bid. The City of Aztec shall adjust bids of businesses and manufacturers who qualify for a preference at the time of evaluation and award.

IN STATE PREFERENCE NUMBER PROCEDURE:
Per Senate Bill 1, signed by Governor Martinez on October 5, 2011, all resident contractors, wishing to obtain in-state preference, all required to obtain a preference number with the New Mexico Department of Taxation and Revenue (TRD). All In State Preference Numbers issued prior to January 1, 2012 are invalid. It will be the sole responsibility of the Bidders requesting consideration for the Resident Preference to obtain approval and a certification from the TRD prior to the bid opening date.

For additional information, please call 505-827-0951 or go to:

http://www.tax.newmexico.gov/businesses/pages/in-statepreferencecertification.aspx

RESIDENT VETERANS PREFERENCE:
In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a new resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with the proper documentation to renew their certificate.

Attached is one form to be completed and returned with your bid if your firm will qualify for this preference. The veteran's preference will not be extended without the certificate from TRD **and** the attached Resident Veterans Preference Certification (last page).

This preference is separate from the in-state preference and is not cumulative with that preference.

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

□ I declare under penalty of perjury that my business prior year revenue starting January 1ending December 31 is less than $1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

□ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $1M but less than $5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

□ I declare under penalty of perjury that my business prior year revenue starting January 1ending December 31 is more than $5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

_____ _____

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

STATEMENT OF BIDDERS QUALIFICATIONS

(To be submitted by the Bidder only upon the specific request of the OWNER in writing).

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

Name of Bidder and N.M. CONTRACTOR'S License Number.

Permanent main office address.

When organized?

If a corporation, where incorporated?

How many years have you been engaged in the contracting business under your present firm or trade name?

Contracts on hand. (Schedule these, showing amount of each contract and the approximated anticipated date of completion.)

General Character of work performed by your company.

Have you ever failed to complete any work awarded to you? If so, where and why?

Have you ever defaulted on a contract? If so, where and why?

List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.

List your major equipment available for this contract.

Experience in construction work similar in importance to this project.

Background and experience of the principal members of your organization, including the officers.

Credit available: $_____

Give bank reference. _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the OWNER?

The undersigned hereby authorizes any person, firm, or corporation to furnish any information requested by the OWNER in verification of this Statement of Bidder's Qualifications

Dated at _____this _____day of _____, 2015

Name of Bidder _____

By: _____

Title: _____

State of _____)
County of _____)

_____being duly sworn deposes and says that he/she is
_____ of _____
and 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 _____, 2015

_____
(Notary Public)

My Commission expires _____, _____.

GENERAL CONDITIONS
OF THE
CONTRACT FOR CONSTRUCTION

The City of Aztec

ARTICLE 1: GENERAL PROVISIONS
ARTICLE 2: OWNER
ARTICLE 3: CONTRACTOR
ARTICLE 4: ADMINISTRATION OF THE CONTRACT
ARTICLE 5: SUBCONTRACTORS
ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
ARTICLE 7: CLAIMS AND DAMAGES
ARTICLE 8: TIME
ARTICLE 9: PAYMENTS AND COMPLETION
ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY
ARTICLE 11: INSURANCE AND BONDS
ARTICLE 12: UNCOVERING AND CORRECTION OF WORK
ARTICLE 13: MISCELLANEOUS PROVISIONS
ARTICLE 14: TERMINATION OF THE CONTRACT

ARTICLE 1: GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of (1) the executed Contract for Construction, (2) these General Conditions of the Contract for Construction, (3) any Supplemental Conditions or Special Conditions identified in the Contract for Construction, (4) The Project manual identified in the Contract for Construction, (5) the Drawings identified in the Contract for Construction, (6) Addenda issued prior to the receipt of bids, (7) Contractor's completed Qualification Statement if requested by owner, (8) Contractor's Performance Bond and Contractor's Payment Bond, (9) Notice to Proceed, (10) and any other exhibits and/or post bid adjustments identified in the contract for Construction, (11) Advertisement for Bid, (12) Information for Bidders, and (13) Change Orders issued after execution of the Contract.

1.1.2 THE CONTRACT

The Contract Documents form the Contract and are the exclusive statements of agreement between the parties. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor or any lower-tier Subcontractor.

1.1.3 THE WORK

Work shall mean construction and service including: supervision, labor, equipment, tools, material, supplies, incidentals operations and activities required by the Contract Documents or reasonably inferable by Contractor there from as necessary to produce the results intended by the Contract Documents in a safe, expeditious, orderly, and workman like manner, and in the best manner known to each respective trade. Only work included in the Contract documents is authorized, and the contractor shall do no work other than that described.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings herein referred to, consist of drawings prepared by the owner and are enumerated in the Contract Documents. Drawings are intended to show general arrangements, design, and dimensions of work and are partly diagrammatic. Dimensions shall not be determined be scale or rule.

1.1.6 SPECIFICATIONS AND DRAWINGS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment systems, standards and workmanship and performance of related services for the Work identified in the Contract for Construction. Specifications are separated into titled divisions for convenience of reference only. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in extent of Work to be performed by any trade. Such separation will not operate to make the Owner an arbiter of labor disputes or work agreements.

1.1.7 THE PROJECT MANUAL

The project manual is a document assembled for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.1 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 APPROVED

The terms “approved”, “equal to”, “directed”, “required”, “ordered”, “designated”, “acceptable”, “satisfactory”, and similar words or phrases will be understood to have reference to action on the part of the Owner’s Representative.

1.2.3

Data in the contract Documents concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Owner believes reliable, but the Owner do not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contacting utility owners and by prospecting.

1.2.4 OWNER

The City of Aztec. The Owner may act through its City of Aztec Commission or any duly authorized committee or representative thereof.

1.2.5 OWNER’S REPRESENTATIVE

The Owner’s Representative is authorized by the Owner as the administrator of the Contract and will represent the Owner during the progress of the Work. Communications from the Owner to the Contractor and from the Contractor to the Owner shall be as indicated in the Contract Documents.

1.2.6 ENGINEER

When the term “Engineer” is used herein, it shall refer to the Architect or the Engineer specified and defined in the Contract for Construction or its duly authorized representative. Communications to the Architect/Engineer shall be forwarded to the address shown in the Contract for Construction.

1.2.7 CONTRACTOR

The Contractor is the person or entity with whom the Owner has entered into the Contract for Construction. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

1.2.8 SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTOR

A Subcontractor is a person or entity who has a contract with the Contractor to perform any of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term "Subcontractor" also is applicable to those furnishing materials to be incorporated in the Work whether work performed is at the Owner's site or off site, or both. A lower-tier Subcontractor is a person or entity who has a contract with a Subcontractor or another lower-tier Subcontractor to perform any of the Work at the site. Nothing contained in the Contract Documents shall create contractual relationships between the Owner and any Subcontractor or lower-tier Subcontractor of any tier**.**

1.2.9 DAY

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise stated**.**

1.2.10 KNOWLEDGE

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the contractor knows or should know, recognizes or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work.

1.2.11 PUNCH LIST

"Punch list" means the list of items, prepared in connection with the inspection of the Project by the Owner's Representative in connection with Substantial Completion of the Work or a Portion of the Work, which the Owner's Representative has designated as remaining to be performed, completed or corrected before the Work will be accepted by the Owner.

1.2.12 CHANGE ORDER

The Contract may be amended or modified without invalidating the Contract, only by a Change Order, subject to the limitations in Article 7 and elsewhere in the contract documents. A change Order is a written instrument signed by the Owner and the Contractor stating their agreement to a change in the Work, the amount of the adjustment to the Contract Sum, if any, and the extent of the adjustment to the Contract Time, if any. Agreement to any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments of the Contract sum, time and schedule.

1.2.13 SUBSTANTIAL COMPLETION

The terms "Substantial Completion" or "substantially complete" as used herein shall be construed to mean the completion of the entire Work, including all submittals required under the contract Documents, except minor items which in the opinion of the Owner's Representative will not interfere with the complete and satisfactory use of the facilities for the purposes intended.

1.2.14 FINAL COMPLETION

The date when all punch list items are completed, including all closeout submittals and approval by the Engineer is given to the Owner in writing.

1.2.15 SUPPLEMENTAL AND SPECIAL CONDITIONS

The terms "Supplemental Conditions" or "Special Conditions" shall mean the part of the Contract

Documents, which amend, supplement, delete from, or add to these General Conditions.

1.2.16 MINORITY BUSINESS ENTERPRISE

Minority Business Enterprise [MBE] shall mean a business concern which is at least fifty-one percent (51%) owned by one (1) or more minorities as defined below or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minorities as defined below, and whose management and daily business operations are controlled by one (1) or more minorities as defined herein.

.1 "African American", which includes persons having origins in any of the black racial groups of Africa.

.2 "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

.3 "Native Americans", which includes persons of American Indian, Eskimo, Aleut, or Native Hawaiian origin.

.4 "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S Trust territories of the Pacific, or the northern Marinas.

.5 "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, or Bangladesh.

1.2.17 WOMEN BUSINESS ENTERPRISE

Women Business Enterprise [WBE] shall mean a business concern which is at least fifty-one percent (51%) owned y one (1) or more women or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women, and whose management and daily business operations are controlled by one (1) or more women.

1.2.18 BUILDING COMMISSIONING

Building Commissioning shall mean the verification by Owner or its separate contractors that building systems are installed in accordance with the plans and specifications and will meet the minimum operational and environmental characteristics indicated in the Contract Documents, commissioning plan and submittals. Building Commissioning shall be conducted in accordance with the commissioning plan. Contractor support of the Building Commissioning, where required, shall be a part of the Work of this Contract.

1.3 INTERPRETATION OF CONTRACT REQUIREMENTS

1.3.1 Conflicts: In the event of conflict in the contract documents, the priorities stated below shall govern.

1.3.1.1 Addenda shall govern over all other contract documents and subsequent addenda shall govern over prior addenda only to the extent modified.

1.3.1.2 In case of conflict between plans and specifications, the specifications shall govern.

1.3.1.3 Conflicts within the plans:

a) Schedules, when identified as such, shall govern over all other portions of the plans.

b) Specific notes shall govern over all other notes and all other portions of the plans except the schedules described in Article 5.01-b (3)(a), above.
c) Larger scale drawing shall govern over smaller scale drawings.
d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.

1.3.1.4 Conflicts within the specifications:

"Contract General Conditions" shall govern over all sections of the specifications except for specific modifications thereto that may be stated in the Supplementary General Conditions or addenda. Now other section of the specifications shall modify the Contract General Conditions.

1.3.1.5 In the event that provisions of codes, safety orders, contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

1.3.2 **Omissions:** In the event of omissions in the contract documents, the following shall apply:

1.3.2.1 If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even through the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.

1.3.2.2 The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the contract documents.

1.4 EXECUTION OR CONTRACT DOCUMENTS

1.4.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that is has performed its own investigation and examination of the Work site and its surrounding and satisfied itself before entering into this contract as to:

.1 conditions bearing upon transportation, disposal, handling, and storage of materials;

.2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;

.3 uncertainties of weather, river stages, flooding and similar characteristics of the site;

.4 conditions bearing upon security and protection of material, equipment, and Work in progress;

.5 the form and nature of the Work site, including the surface and sub-surface conditions;

.6 the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and

.7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.

1.4.2 The Owner assumes no responsibility or liability for the physical conditions or safety of the Work site of any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe place for the performance of the work. The Owner shall not be required to make any adjustment in either the contract Sum or Contract Time concerning any failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph.

1.4.3 Drawings, specifications, and copies thereof furnished by the Owner are and shall remain the Owner's property. They are not to be used on another project and, with the exception of one contract set for each party to the Contract, shall be returned to the Owner's Representative on request, at the completion of the Work.

1.4.4 REQUIRED PROVISIONS DEEMED INSERTED

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

1.5 OWNERSHIP AND USE OF ENGINEER'S DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS INSTRUMENTS OF SERVICE

1.5.1 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Owner's Representative's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings. Before ordering any materials or doing-any Work, the Contractor and each Subcontractor shall be submitted to the Contractor and each Subcontractor shall verify measurements at the Work site and shall be responsible for the correctness of such measurements. Any difference, which may be found, shall be submitted to the Owner's Representative for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Owner's Representative before making the change.

ARTICLE 2: OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within 15 days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, test and balance, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Data in the Contract Documents concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Owner believes reliable, but the Owner does not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contracting utility owners and by prospecting.

2.2.3 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project manuals as are reasonably necessary for execution of the Work

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to perform or correct Work which is not in accordance with the requirements of the Contract Documents, fails to supply adequate working force (number and skill level), fails to supply material of proper quality, or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the owner to

exercise this right for the benefit of the Contractor or any other person or entity except to the extent required by Subparagraph 6.1.3..

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of a written notice from the Owner to correct such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the differences to Owner.

2.4.2 In the event the Contractor has not satisfactorily completed all items on the Punch List by the Final Completion Date, the Owner reserves the right to complete the Punch List without further notice to the Contractor or its surety. In such case, Owner shall be entitled to deduct from payments then or thereafter due the Contractor the cost of completing the Punch List items. If payments then or thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to Owner.

2.5 EXTENT OF OWNER'S RIGHTS

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3: CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner in the Owner's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.1.4 During the progress of the Work, Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions. Contractor shall prepare coordination drawings to ensure the proper fitting of the Work in place. Contractor shall consult all Contract Documents to determine the exact location of all work and verify spatial relationships to all work. Any question concerning the location or spatial relationship shall be submitted to the Owner. Specific locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined in consultation with the Owner.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Contractor's coordination drawings as required and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly, so as not to delay progress of the work, to the Owner as a request for information in such form as the Owner may require**.** If the Contractor performs any construction activity which it knows or should have known involves a recognized error, inconsistency or omission in the Contract Documents without such written notice to the Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall be responsible for preparing construction coordination and construction assembly drawings to plan the Work and proper fitting of the Work. The Contractor shall coordinate all construction operations, all subcontractors, all material suppliers and all work for this project to insure the efficient and orderly installation of all work so as to produce a high quality project that complies with the contract documents. Specific locations for partitions,

structure, equipment, pipelines, ductwork, and all other such items of Work, both above ceilings, below slabs and in the useable spaces shall be indicated. The best sequence of Work shall be considered. During the process of preparing the drawings, the contractor shall verify all field dimensions and measurements prior to fabricating and installation of Work. The contractor shall consult all Contract Documents to determine the location of all Work and to verify spatial relationships of the Work. The purpose of assembling these drawings is to coordinate the location and installation sequence of Work, to avoid waste and loss, but not to perform design functions. Any questions and conflicts shall be brought to the attention of the Owner for resolution before Work proceeds. Reasonable time for this Work shall be included in the Contract Time.

3.2.3 Any design inconsistencies, errors or omissions noted by the Contractor during this review shall be reported promptly, so as not to delay the progress of the Work, to the Owner**,** but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required, but shall use best efforts to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner.

3.2.4 If the Contractor performs any construction activity which it knows involves a recognized error, inconsistency, or omission in the Contract Documents without such written notice to the Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Owner.

3.2.5 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner in response to the Contractor's notices or requests for information, the Contractor shall make Claims. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2 and 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations**.**

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for job site safety**,** and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the job site safety and, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to

proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors**.** The Contractor shall supply sufficient and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Work with diligence to ensure completion within the time specified in the Contract Documents.

3.3.3 The Contractor shall be represented at the site by a competent superintendent from the beginning of the Work, who shall not be reassigned until its final acceptance, unless otherwise permitted in writing by the Owner. The superintendent for the Contractor shall exercise general supervision over the Work and such superintendent shall have decision-making authority of the Contractor.

3.3.4 Communications given to the superintendent shall be binding as if given to the Contractor. These communications shall be provided in writing to the superintendent, with a copy to the Contractor.

3.3.5 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.6 The Contractor's scheduled outage/tie-in plan, time, and date is subject to approval by the Owner. Failure of Contractor to secure Owner's approval shall cause the Contractor to waive any right to an adjustment of the Contract Sum or Contract Time for any postponement, rescheduling or other delays ordered by Owner in connection with such Work. Owner's approval shall not be unreasonably withheld.

3.3.7 The Contractor shall coordinate all Work so there shall be no prolonged interruption of existing utilities, systems and equipment of Owner. Any existing plumbing, heating, ventilating, air conditioning, or electrical disconnection necessary, which affect portions of this construction or building or any other building, must be scheduled with the Owner to avoid any disruption of operation within the building under construction or other buildings or utilities. In no case shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, either intentionally or accidentally, shall not relieve the Contractor from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workers responsible for the repair and restoration leave the job.

3.3.8 The Contractor shall be responsible for repair of damage to property caused by the Contractor on or off the project occurring during construction of the project, and all such repairs shall be make to meet code requirements or to the satisfaction of the Owner if code is not applicable, if possible, given the availability of parts, equipment and services necessary to effect the repair/restoration. Cost of expediting repair/restoration shall be the Contractor's provided the cause of the accidental interruption is the Contractor's.

3.4 USE OF SITE

3.4.1 The Contractor shall limit operations and storage of material to the area within the Work limit lines shown on Drawings, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.

3.4.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitations of any other provision of the Contract Documents, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the work in the event of partial occupancy. Owner may agree, in writing, to disruption of adjacent buildings, if necessary to properly perform the Work. Contractor shall assume full responsibility for any damage to the property comprising the work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

3.4.3 The Contractor shall not permit any workers to use existing facilities at the Work site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by Owner. The Contractor, Subcontractor of any tier, suppliers and employees shall comply with instructions or regulations of the Owner's governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations. Any request for Work, a suspension of Work or any other request or directive received by the Contractor from occupants of existing buildings shall be referred to the Owner for determination.

3.4.4 The Contractor shall keep the Work site and surrounding areas free from accumulation of waste materials, rubbish, debris, and dirt resulting from the Work and shall clean the Work site and surrounding areas as requested by the Owner. The Contractor shall be responsible for clean up and removal of debris from premises. The building and premises shall be kept clean, safe, in workmanlike manner, in compliance with OSHA standards at all times. At completion of the Work, the Contractor shall remove from and about the Work site tools, construction equipment, machinery, fencing, and surplus materials. Further, at the completion of the work, all dirt, stains, and smudges shall be removed from every part of the building, all glass in doors and windows shall be washed, and entire Work shall be left broom clean in a finished state ready for occupancy. If the Contractor fails to comply with the provisions of this paragraph, the Owner may do so, upon proper notice, and the cost shall be charged to the Contractor.

3.5 LABOR AND MATERIALS

3.5.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.5.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Owner and in accordance with a Change Order, as set forth in Section 3.13.

3.5.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.6 WARRANTY

3.6.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will confirm to the requirements of the Contract Documents for a period of twelve months after Substantial Completion or specific acceptance as provided in this Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as the kind and quality of materials and equipment**.** Should the Contractor fail or refuse to make the necessary repairs, replacements, and tests when requested by the Owner or Owner, the Owner may perform, or cause the necessary work and tests to be performed, at the Contractor's expense, or exercise the Owner's rights under Article 14.

3.6.2 Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner, nor expiration of warranty stated herein, will constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any responsibility for non-conforming work. The Contractor shall immediately remedy any defects in the Work and pay for any resulting damage upon written notice from the Owner. Should the Contractor fail or refuse to remedy the non-conforming work, the Owner may perform, or cause to be performed the work necessary to bring the work into conformance with the Contract Documents at the Contractor's expense.

3.7 TAXES

3.7.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7.2 The Contractor will comply with the requirements of the State of New Mexico Gross Receipts Law and all amendments to same and will require all subcontractors to comply with the same.

3.8 PERMITS, FEES, AND NOTICES

3.8.1 The Contractor will procure all certificates of inspection, use occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy will be delivered to the Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. A photocopy of the building permit will be delivered to the Owner as soon as it is obtained. Upon final completion, the Contractor will deliver all original permits, licenses, and certificates to the Owner and will deliver photocopies to the Owner. The costs of such procurement, payment and delivery are included within the

Contract Sum. If a change Order affects any applicable Building Codes for the Project, new drawings will be submitted by the Contractor to proper authorities for approval. The Contractor will alert the Owner of the need for additional drawings if the Contractor knows that additional drawings will be needed to submit to appropriate governmental authorities for approval.

3.8.2 The contractor shall comply with and give notices required by laws, regulations and lawful orders of public authorities applicable to performance of the Work.

3.8.3 It is not the contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly, so as not to delay the progress of the Work, notify the Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.8.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the costs attributable to correction.

3.9 ALLOWANCES

3.9.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.9.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discount;

.2 contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual cost and the allowances under Clause 3.9.2.1 and (2) changes in Contractor's costs under Clause 3.9.2.2.

3.9.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, within fifteen (15) days after issuance of Notice to Proceed, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall include a

critical path schedule, 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.

3.10.2 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals that is coordinated with the Contractor's construction schedule and allows the Owner reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

3.10.4 In the event the Owner determines that the performance of the Work, as of a Owner specified completion date as identified in the Construction Documents , is not progressing or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, facilities, (3) expediting delivery of materials, and (4) other similar measures. Such corrective measures shall continue until the progress of the Work complies with the stage of completion required by the Construction Documents. The Owner's right to require corrective measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum specific to these corrective measures.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and shall be delivered to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples**,** which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Owner without action.

3.12.5 The Contractor shall review for compliance with the Contract Drawings, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Owner without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Drawings.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Owner.

3.12.8 The Work shall be in accordance with approved submittals: except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contract has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice the Owner's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certification by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and

other submittals prepared by such professional. Shop Drawings and other submittals related to the work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed by such design professionals, provided the Owner have specified to the Contractor all performance and design criteria that such services must satisfy. The Owner will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 SUBSTITUTIONS

3.13.1 A substitution is a Contractor proposal of an alternate product or method in lieu of has been specified or shown in the Contract Documents.

3.13.2 Contractor may make a proposal to the Owner's Representative to use substitute products or methods as set forth herein, but the Owner's Representative's decision concerning acceptance of a substitute shall be final. The Contractor must do so in writing and setting forth the following:

.1 full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.

.2 reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.

.3 the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.

.4 the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.

.5 proposals for substitutions shall be submitted to the Owner in sufficient time to allow the Owner no less than ten (10) working days for review. No substitution will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

3.13.3 Substitutions may be rejected at the Owner's sole discretion

3.13.4 Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any additional service fees charged by the Engineer or other consultants for evaluating each proposed substitute if the substitution is made after the submittal process has been completed.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction by the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 ROYALTIES, PATENTS, AND COPYRIGHTS

3.15.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner.

3.16 INDEMNIFICATION

3.16.1 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.17 REPRESENTATIONS AND WARRANTIES

3.17.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Owner-Contractor Agreement, which representations and warranties will survive the execution and delivery of the Owner-Contractor Agreement and the final completion of the Work:

(a) that the Contractor is financially solvent, able to pay his debts as they mature and possessed of sufficient working capital to complete the Work and perform Contractor's obligations under the Contract Documents;

(b) that the Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform Contractor's obligations hereunder and has sufficient experience and competence to do so;

(c) that the Contractor is authorized to do business in the State of New Mexico where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the site of the Project;

(d) that Contractor's execution of the Owner-Contractor Agreement and Contractor's performance thereof is within Contractor's duly authorized powers; and

(e) that Contractor's duly authorized representative has visited the site of the Work, familiarized themselves with the local conditions under which the Work is to be performed, and correlated their observations with the requirements of the Contract Documents.

3.18 SUBSURFACE UTILITIES

3.18.1 Owner will comply with NMSA 1978, Chapter 62, Article 14 (the New Mexico Excavation Law) by performing utility spotting activities or by employing a qualified utility spotting company, or both. The Owner will provide the latest and best underground utility information available regarding the campus in the form of Utility Mapping Drawings. In addition, the Contractor shall perform utility spotting work. The Contractor shall locate, spot and find all utilities within the project boundaries or affected by the project. The Contractor shall repair any and all damaged utilities caused by excavation and spotting activities. Costs for this work shall be included in the Contract Price. Owner will not recognize claims for spotting or repairing concealed or unknown subsurface utilities. The Owner will process an appropriate Change Order if concealed or unknown subsurface utilities must be relocated in order to construct the project as indicated in the Contract Documents.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.1 ENGINEER

4.1.1 The Engineer is the person lawfully licensed to practice Engineering/architecture or an entity lawfully practicing engineering/architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Engineer" means the Engineer or the Engineer's authorized representative.

4.1.2 Owner reserves the right to appoint a representative empowered to act for Owner during the administration of the Contract with such duties and responsibilities as set forth in a written notice to Contractor.

4.1.3 Owner may employ or retain any licensed Engineer to perform any part of the duties or responsibilities of the Engineer hereunder or perform them through Owner's representative. In the event that employment of the Engineer is terminated, Owner will give prompt written notice to the Contractor of the termination and the scope of the Engineer's duties to be assumed by a replacement Engineer or the Owner's representative.

4.2 ENGINEER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Engineer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the Work, (2) to use best efforts to guard the Owner against defects and deficiencies in the Work, (3) to determine if the Work is proceeding in accordance with the Contract Documents; and (4) cause Engineer's Consultants to perform observations necessary to determine that key components of the Work are being carried out in accordance with the Contract Documents . If Engineer or its Consultants becomes aware of the failure of Contractor, Subcontractor or any other persons performing any of the Work not in accordance with the Contract Documents the Engineer shall promptly notify Owner.

4.2.3 The duties and responsibilities of the Engineer set forth in Subparagraph 4.2.2 are solely for the benefit of the Owner, and the Engineer's performance or non-performance of its obligations under Subparagraph 4.2.2 shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized or requested by the Owner, the Owner and Contractor shall communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Engineer's evaluations of the progress and quality of the Work, Contractor's Applications for Payment and all other information available to the Engineer, the Engineer shall within three (3) business days of receipt of a properly executed Application for Payment certify to the Owner the undisputed amount recommended for payment to the Contractor.

4.2.6 The Engineer will have authority to reject Work that does not conform to the Contract Documents**,** and shall do so unless, after consultation with the Owner, Owner instructs otherwise. Whenever the Engineer in the exercise of Engineer's professional opinion considers it necessary or advisable, the Engineer will have authority subject to the Owner's prior approval to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Engineer will promptly review and approve**,** reject or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance the Contract Documents. Review of such submittals is conducted solely in the interests of the Owner, and shall not relieve the Contractor of responsibility for-determining the accuracy and completeness of other details such as dimensions and quantities, proper fit of portions or components of the Work to each other, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5, and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4. All Change Orders and Construction Change Directives shall require the approval of the Owner in writing to be binding on the Owner.

4.2.9 The Engineer will conduct inspections to make recommendations to the Owner of the date or dates of Substantial Completion and the date of final completion, will receive**,** approve and forward to the Owner, written warranties and related documents required by the Contract, and

will recommend a final Certificate for Payment upon compliance with the requirements of the Contract Documents and the Retainage Act.

4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site.

4.2.11 Subject to the claims procedures set forth in Paragraph 4.3**,** the Engineer will interpret and decide matters concerning performance under the Contract Documents on written request of either the Owner or Contractor. Upon receipt of such request from either the Owner or Contractor, the Engineer shall promptly notify the non-requesting party of the details of the request. The Engineer's response to the request will be made promptly, and in no event later than 15 days after the date on which such request is made. Delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Engineer will be consistent with Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.3 CLAIMS AND DISPUTES

4.3.1 **Definition:** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or related to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 **Time Limits on Claims:** Claims by Owner or Contractor must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Engineer and the other party. Owner, Contractor and Engineer shall cooperate in efforts to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such Claim.

4.3.3 **Continuing Contract Performance:** Pending final resolution of a Claim except as otherwise directed by the Owner in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 **Claims for Concealed or Unknown Conditions:** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent

in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will notify the Owner and Contractor stating the reasons, request information from the Contractor substantiating such cost and time impacts, and recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 14 days after the Engineer has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Engineer for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 **Claims for Additional Cost**: If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6. Contractor shall, upon recognition of a condition giving rise to a claim for additional cost, establish separate accounting codes or other methods for quantifying the cost or time impact attributable to the Claim. Written notice of the Claims shall itemize the claim and contain sufficient detail, including but not limited to the information required above, to permit evaluation of the claim by the Owner and Engineer. Engineer will give prompt notice to Contractor of inadequacies in the supporting information. No claim for delay shall be recognized for periods of time between the initial assertion of the claim and submission of adequate information for the Owner and Engineer to evaluate the claim or for a period of fifteen (15) days after submission of adequate information for evaluation.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Engineer, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Engineer, (4) unjustified failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 CLAIMS FOR ADDITIONAL TIME

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such claim shall be documented by U.S. Weather Bureau Climatological Reports for the month(s) involved plus a report indicating the average precipitation, temperature, etc. for the past ten (10) years from the nearest reporting station. The ten-year average shall be the basis for determining the number of adverse weather days that the Contractor should

reasonably have anticipated and the conditions the Contractor should reasonably have expected to encounter.

4.3.8 **Injury or Damage to Person or Property:** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven (7) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 **Claims for Consequential Damages:** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the contractor for principal and field office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 **Decision of Engineer:** Claims, including those alleging an error or omission by the Engineer but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Engineer for decision. An initial decision by the Engineer shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Engineer with no decision having been rendered by the Engineer. The Engineer will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Engineer will review Claims and within ten days of the receipt of the Claim take one or of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

4.4.3 In evaluating Claims, the Engineer may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may

assist the Engineer in rendering a decision. The Engineer may request the Owner to authorize retention of such persons at the Owner's expense.

4.4.4 If the Engineer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Engineer when the response or supporting data will be furnished or advise the Engineer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Engineer will either reject or approve the Claim in whole or in part.

4.4.5 The Engineer will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Engineer shall be final and binding on the parties subject to mediation and arbitration.

4.4.6 A written decision of the Engineer shall state that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision. Failure to demand arbitration within said 30 days period shall result in the Engineer's decision becoming final and binding upon the Owner and Contractor. If the Engineer renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Engineer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Engineer or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Engineer, by mediation or by arbitration.

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract, except Claims waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Engineer or 30 days after submission of the Claim to the Engineer, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA § 13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or

equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.6 ARBITRATION

4.6.1 Any Claim arising out of or related to the Contract, except Claims waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after decision by the Engineer or 30 days after submission of the Claim to the Engineer, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Engineer.

4.6.3 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.4 **Claims and Timely Assertion of Claims:** The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that part on which arbitration is permitted to be demanded.

4.6.5 **Judgment on Final Award:** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5: SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract" shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design and where applicable the name of the installing contractor), trades and proposed work scope for each portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. All Subcontractors must meet all the required contracting licensing and bonding requirements.

5.1.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.1.3 If the Owner or Engineer has reasonable objection to a person or entity proposed by the Contractor, or Subcontractor, the Contractor shall propose another to whom the Owner or Engineer has no reasonable objection.

5.1.4 The Contractor shall furnish a complete list of Subcontractors changes, each and every time a proposed change is to be requested by the Contractor. Any substitutions of a Subcontractor will comply with the New Mexico Subcontractor Fair Practices Act to the extent that the Subcontractors Fair Practices Act is applicable. The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.2 SUBCONTRACTURAL RELATIONS

5.2.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors

will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.2.2 All agreements between the Contractor and a Subcontractor or supplier shall contain provisions whereby Subcontractor or supplier waives all rights against the Owner, contractor, Owner's representative, Engineer and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any of the perils covered by property or builders risk insurance coverage required of the Contractor in the Contract Documents. If insureds on any such policies require separate waiver forms to be signed by any Subcontractors of any tier or suppliers, Contractor shall obtain the same.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and the Contractor in writing; and

.2 assignment is subject to prior rights of the surety, if any, obligated under bond relating to the Contract.

5.3.2 Upon such assignment, if the Work has been suspended for more than 30 consecutive days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner or Engineer shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with the other separate contractors, the owners' forces and the Owner in reviewing and coordinating the construction work and schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The contractor shall complete the work correctly and at the proper time and not delay or cause additional expense to another contractor.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract.

6.1.5 Owners Commissioning Agent: In addition to the Contractors equipment start-up and operational testing as required by the Contract Documents, the Owner may enter into separate contracts for Commissioning Services, the scope of which is generally contained in the Contract Documents. The Contractor and the associated subcontractors shall fully support the Owners Commissioning activities as required by the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of materials and equipment and performance of activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly, so as not to delay the project, report to the Engineer and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. The Contractor's failure to promptly, so as not to

delay the project, report such discrepancies or defects constitutes acknowledgement and acceptance-that the Owner's or separate contractor's completed or partially completed Work is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of the Owner or separate contractor.

6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching and clean up as are described for the Contractor in Subparagraph 3.14 and 3.15.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible.

ARTICLE 7: CLAIMS AND DAMAGES

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer. A Construction Change Directive requires agreement among the Owner, Contractor and Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the works may be issued by the Engineer alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor will proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor, and Engineer, stating their agreement upon all of the following:

.1 change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.2.3 With each proposal for a change in the Scope of Work, the Contractor will submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's work to include the following detail in the order listed:

.1 material quantities and unit costs.

.2 labor amounts and hourly rates, (identified with specific items of material to be placed or operation to be performed).

.3 Labor Burden, including specific entries for Workman's Compensation Insurance, employee benefits, and employment taxes (Federal and State). The Labor Burden total will not exceed 46% of labor amounts. Exceptions can be made to this 46% limitation on a case by case basis. To request exceptions to the Contractor must submit detailed justification showing the elements of cost that would cause the labor burden to exceed 46%. The Engineer will review this justification for accuracy and reasonableness and notify the Owner, in writing, regarding the Engineer's recommendation concerning labor burdens above 46%.

.4 equipment costs, if any, (cars and pick-up trucks will not be included as equipment).

.5 bonds and Public Liability Insurance.

.6 do not include State Gross Receipts Tax. It will be computed with each pay application.

.7 overhead and profit.

7.2.4 Overhead and profit on Change Orders shall be applied as follows:

.1 the overhead and profit charged by the Contractor shall be considered to include, but not limited to, performance bond, builder's risk and public liability insurance, job site office expense, normal hand tools, incidental job supervision, field supervision, company benefits, and general office overhead. The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:

Subtotal before applying overhead and profit:	Under $500	$500 to $5,000	$5,000 to $25,000	Over $25,000
Contractor (for work performed by his own forces):	Maximum: 28.00%	Maximum: 21.00%	Maximum: 15.75%	Maximum: 11.81%
Subcontractor (for work performed by his own forces):	Maximum: 22.40%	Maximum: 16.80%	Maximum: 12.60%	Maximum: 09.44%
Contractor (for work performed by Subcontractor):	Maximum: 11.20%	Maximum: 08.40%	Maximum: 06.30%	Maximum: 04.72%

Not more than three mark-ups, not to exceed individual maximums shown above, shall be allowed regardless of the number of tier subcontractors. Overhead and profit shall be shown separately for each Subcontractor of any tier and the Contractor.

.2 on proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change in direct cost for the Contractor and Subcontractor of any tier performing the Work.

.3 the percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the quantity of work or materials shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved, but shall not be less than the following:

Overhead and Profit: 10% credit to the Owner from the Contractor or Subcontractor of any tier for Work performed with their respective forces or materials purchased. 5% credit to the Owner from the Contractor on Work performed by other than his forces. 5% credit to the Owner from the first tier Subcontractor on Work performed by his Subcontractor of

any tier.

.4 if there is additional time granted in a Change Order, it strictly applies toward liquidated damages. No additional money can be charged for overhead for time extensions.

.5 no overhead or profit will be allowed on FICA or FUTA taxes.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement or adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation as outlined in 7.2.3.

.2 unit prices stated in the Contract Documents or subsequently agreed upon.

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith including adjustment in the Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Engineer on the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together, with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age, and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed.

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that result in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time; or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 CONTRACTOR COMPLIANCE WITH THE CHANGE ORDER PROCESS

7.4.1 The Contractor shall provide Change Order Pricing and backup in a timely manner. No claim for an addition to the Contract Sum will be valid unless authorized in writing by the Owner.

7.4.2 No changes or additions to the work to be performed, materials to be furnished, or in the provisions of the Contract will be authorized until execution and delivery by the Owner to the Contractor of the written Change Order. Any work completed by the Contractor outside the original project scope without written approval from the Owner will be deemed as a waiver by the Contractor for additional compensation for said work.

7.5 MINOR CHANGES TO THE WORK

7.5.1 The Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8: TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Engineer and the Owner in accordance with paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.1.5 The date of Final Completion is the date certified by the Engineer and the Owner in accordance with paragraph 9.10.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work will not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.4 The Owner shall not be liable to the Contractor if the Contractor submits a progress report or any construction schedule expressing an intention to achieve completion of the Work prior to the Contract Time. No liability on the part of the Owner shall be created or implied for failure of the Contractor to so complete the Work.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Engineer and the Owner determine~~s~~ may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Engineer and the Owner may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3 and the applicable provisions of Paragraph 7.3.

8.4 CONTRACT TIME AND LIQUIDATED DAMAGES

8.4.1 The Contractor agrees that the Work will be prosecuted regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time is a reasonable time for completion of the Work, taking into consideration the average climate range and usual industrial conditions prevailing in this locality. If the Contractor neglects, fails or refuses to complete the Work within the Contract Time, or any proper extension granted by the Owner, then the Contractor agrees to pay to the Owner the amount specified in the Contract Documents, not as a penalty, but as liquidated damages.

8.4.2 The parties agree that the amount of the likely damage to the Owner for such delay is difficult to ascertain at the time of execution of this agreement, but that a reasonable estimate of such damages for delay is set forth in the Contract Documents. Liquidated damages may be deducted from any monthly progress payments due to the Contractor or from other moneys being withheld from the Contractor.

8.4.3 The Contractor and Surety are liable for any other liquidated damages over and above moneys held by the Owner.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.1.2 The Owner may withhold any payments to the Contractor if the Contractor fails to perform any of its obligations or is in default under any of the Contract Documents identified in Paragraph 9.5; provided, however, that any payments withheld will be limited to an amount sufficient to cure any default or failure of performance by the Contractor or as liquidated damages pursuant to paragraph 8.4.1.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Engineer and the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer and Owner may require. This schedule, upon acceptance by the Engineer and the Owner shall be used as a basis for reviewing the Contractor's Applications for Payment. No Applications for Payment will be processed until the schedule of values is received and approved by the Engineer and the Owner.

9.2.2 The Owner will assign a dollar value to a line item in the schedule of values for "Contract Closeout". It will represent the estimated value of costs associated with closeout procedures, including but not limited to, preparation and delivery of project record drawings, warranties, affidavits of training sessions in the use of building equipment, operation and maintenance manuals, certification of compliance with final commissioning reports; certification of conformity to final testing and balancing of air-handling systems, and delivery of all close-out documentation.

9.3 APPLICATION FOR PAYMENT

9.3.1 By the date established as the end of each progress payment period, the Contractor shall submit to the Engineer and the Owner an itemized Application for Payment completed in accordance with the schedule of values and accompanied by the Owner's Certificate for Payment form. The Application for Payment shall be notarized, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers**.**

9.3.1.1 As provided in Subparagraph 7.3.8 such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer or the Owner, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3 It is the Contractor's responsibility to comply with the provisions of the New Mexico Retainage Act (NMSA 57-28-1-et. seq.), including but not limited to making subcontractors aware of the forms and provisions of the escrow account entered into by the Owner.

9.3.1.4 It is the Contractor's responsibility to comply with Section 57-28-5(C) of the New Mexico Retainage Act requiring Contractors to make prompt payment to Sub-Contractors for work performed within (7) seven days after receipt of payment from the Owner or pay interest for failing to make prompt payment.

9.3.1.5 The Owner will pay 100% of the amount due the Contractor for progress payments less those amounts identified through the procedures in Paragraph 9.1.2 and in accordance with the requirements of the New Mexico Retainage Act.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made for materials and equipment delivered and suitably stored at the site for incorporation in the Work. Any payments for such materials or equipment shall be conditioned upon the Contractor's demonstrating that they are adequately protected from weather, damage, vandalism and theft and that such materials or equipment have been inventoried and stored in accordance with procedures established by or approved by the Owner**.** If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a secure location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 The Engineer and the Owner**,** within seven days after receipt of the Contractor's Application for Payment, will issue a Certificate for Payment to the Contractor, for such amount as the Engineer and the Owner determine~~s~~ is properly due, or notify the Contractor in writing of the reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, that the Work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

9.4.3 The Owner will issue payment to the Contractor in the amount certified in the approved Certificate for Payment within twenty-one (21) days from the end of the progress payment period. This period is inclusive of the time for review of the Application for Payment specified in paragraph 9.4.1.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Engineer or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Contractor and Engineer and Owner cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

.8 disputed certification amounts shall be subject to the provisions of the New Mexico Retainage Act (NMSA 57-28-1 et. Seq.).

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Engineer has issued a certificate for payment and the Owner has independently verified the information and approved the certificate for payment, the Owner will make payment in the manner and within the time provided in the Contract Documents.

9.6.2 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, the amount to which each Subcontractor is entitled in conformance with paragraph 9.3.1.4. The Contractor shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Engineer will, on request, furnish to a Subcontractor information regarding percentages of completion or amounts applied for by the Contractor and action taken by the Engineer and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Engineer shall have an obligation to pay or to see to the payment of moneys to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not pay the Contractor the amount approved by the Engineer and the Owner, within thirty (30) days from the date specified in paragraph 9.4.3, then the Contractor may, upon written notice to the Owner and Engineer, stop the Work until payment of such amount has been received. Unless Contractor's action was improper or if the amount claimed is shown not to have been due, the Contract Time may be adjusted appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which will be accomplished as provided in Article 7. Contractor will nevertheless be liable to Owner for loss, damage, or expense caused by any wrongful stop-work by the Contractor.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued so the Owner can occupy and utilize the Work for its intended use. The Contractor will secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier. The

Contractor will also participate in a walk-through of the project within one year after Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer and the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Engineer and the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If inspection by the Engineer or the Owner discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the requirements of the Contract, the Contractor shall complete or correct such item**.** In such case, the Contractor shall then submit a request for another inspection by the Engineer and the Owner to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will notify the Owner, and unless Owner disagrees with Engineer's opinion that Substantial Completion has been reached, the Engineer will prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall furnish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.4.1 Owner may withhold approval of a Certificate of Substantial Completion of the Work until building commissioning is successfully completed.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer and the Owner as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance**,** the Engineer and the Owner will promptly make such inspection and, when the Engineer and the Owner find~~s~~ the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will notify the Owner, and unless the Owner disagrees with the Engineer's opinion that Final Completion has been reached, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.1.1 Final Completion of the Work shall be accomplished no later than fourteen (14) days following Substantial Completion except as noted in paragraph 9.10.3.

9.10.1.2 If Final Completion is not accomplished fourteen (14) days after Substantial Completion, the Contractor will pay an amount specified in the Contract Documents, not as a penalty, but as liquidated damages for Final Completion until such time as Final Completion is accomplished and the conditions of paragraph 9.10.1 and 9.10.2 are met. This provision is subject to the conditions noted in paragraph 9.10.3.

9.10.2 Final payments shall not become due until the Contractor submits to the Engineer and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, to final payment, (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner, and (6) other closeout requirements noted in paragraph 9.2.2. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and certification by the Engineer, and without

terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 The Contractor shall at all times conduct operations under this Contract in a manner to avoid risk of bodily harm to persons or risk of damage to any property. The Contractor shall promptly take precautions, which are necessary and adequate against conditions created during the progress of the Work which involve a risk of bodily harm to persons or a risk of damage to property. The Contractor shall continuously inspect the Work, materials and equipment to discover and determine any such conditions and shall be responsible for discovery, determination and correction of such conditions. The Contractor shall comply and shall cause its Subcontractors and others on the Project site to comply with applicable safety laws, standards, codes and regulations of the jurisdiction in which the Project is located.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected hereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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

.4 students, staff, faculty, visitors, and members of the general public on or in the vicinity of the City of Aztec property or facilities.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Paragraph 10.2 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or

anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable solely to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations stated elsewhere in the Contract Documents.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 The Contractor shall promptly report in writing to the Owner and the Engineer all accidents arising out of or in connection with the Work which cause lost time injury, personal injury, death or property damage, giving full details and statements of any witnesses. In cases of serious bodily injury, death or serious property damage, Contractor shall also contact Owner and Engineer immediately by the most expeditious means.

10.2.9 The Contractor shall promptly notify the Owner and the Engineer in writing of any claims received by the Contractor for personal injury or property damage related to the Work.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance known by the Contractor to be hazardous, including but not limited to asbestos**,** ~~or~~ polychlorinated biphenyl (PCB), or other substances listed by the EPA as hazardous, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area**,** take steps to contain spread of the material and immediately report the condition to the Owner and Engineer in writing.

10.3.2 The Owner shall obtain the services of an agency certified to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. The Owner shall, at its own expense, employ persons to render material encountered on the Site harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time and the Contract Sum shall be adjusted as provided in Article 7. "Rendered Harmless" shall mean that the levels of such materials are less than any applicable exposure standards set forth in OSHA or EPA regulations.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Document, the Contract shall be adjusted in accordance with Article 7.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall use its best efforts to prevent threatened damage, injury of loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11: INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to transact insurance in New Mexico such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefit and other similar employee benefit acts, which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 claims for damages, other than to the Work itself, because of damage to or destruction of tangible property, including loss of use resulting there from;

.5 claims for damages because of bodily injury, death of a person or property, damage arising out of ownership, maintenance, or use of a motor vehicle;

.6 claims for bodily injury or property damage arising out of completed operations; and,

.7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage's shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverage's afforded under the policies will not be canceled or allowed to expire until at least 45 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverage's are required to remain in force after final payment, and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. The Contractor shall furnish information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, with reasonable promptness.

11.1.3.1 The Contractor will furnish the Owner one copy of each of the Certificates of Insurance herein required for each copy of the Contract, showing the coverage's, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance carried by the Contractor. The Contractor will furnish to the

Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance will be in the form of AIA Document G705, or similar format acceptable to the Owner. Such certificates will be filed with the Owner and will also contain the following statements:

.1 "the City of Aztec, its agents, servants and employees are recognized as Additionally Insured."

.2 "the insurance coverage certified herein will not be canceled or materially changed except after forty-five (45) calendar days written notice has been provided to the Owner."

.3 "the insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance copy transacting the policy."

11.1.4 Minimum Required Coverage's:

11.1.4.1 Compensation Insurance: During the life of this Contract the Contractor will procure and will maintain Worker's Compensation Insurance as required by applicable State law for all of the Contractor's employees to be engaged at the site of the Project under this Contract and in case of any such work being sublet, the Contractor will require the Subcontractor or Sub-subcontractor similarly to provide Worker's Compensation Insurance for all of the Subcontractor's or Sub-subcontractor's employees which are not covered under the Contractor's Worker's Compensation Insurance. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor will provide and will cause each Subcontractor and Sub-subcontractor to provide Employer's Insurance in an amount not less than $1,000,000.

11.1.4.2 Contractor's Public Liability Insurance: The Contractor will maintain liability insurance coverage equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978, as it now exists or may be amended. Limits will be $1,000,000.00.

11.1.4.3 Comprehensive Vehicle Liability: During the life of this Contract, including any extensions to same, the Contractor will procure and will maintain Vehicle Liability Insurance providing limits of liability not less than the following:

TYPE:	LIMIT OF LIABILITY:
Bodily Injury	$1,000,000 Each Occurrence
Property Damage	$1,000,000 Each Occurrence

11.1.4.4 Subcontractor's and Sub-subcontractor's Public Liability and Vehicle Liability Insurance: The Contractor will either:

(a) Require each Subcontractor and Sub-subcontractor to procure and maintain during the life of the Subcontract or Sub-subcontract, Public Liability Insurance of the types and amounts specified above, or

(b) Insure the activities of the Subcontractor and Sub-subcontractor in the Contractor's policy as required under this Article.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Engineer's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under paragraphs 11.1 through 11.1.4.4.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Engineer waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.4 PROPERTY INSURANCE

11.4.1 The Owner will provide property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.2 The Builder's Risk coverage to be furnished by the Owner is provided under the State of New Mexico's Blanket Property Coverage Policy, a copy of which is available for your perusal at the Purchasing Office of the City of Aztec.

11.4.3 The policy does not insure for theft of any building materials or supplies. Nor is there coverage provided for Contractor's, Subcontractor's or Sub-subcontractor's tools, machinery, or equipment. Any loss resulting there from will be borne by the Contractor incurring the loss.

11.4.4 The Contractor will be responsible for the first deductible amount of any insured loss.

11.4.5 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverage's in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then affect insurance, which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order, the cost thereof shall be charged

to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.6 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.7 **Loss of Use Insurance**: The Owner may provide such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

11.4.8 **Waivers of Subrogation**: The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsements or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.9 A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.10 Cost of required bonds shall be charged against proceeds received. Proceeds so received, shall be distributed by the Owner in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in paragraph 4.5 and 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.11 The Owner shall have power to adjust and settle a loss with insurers.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 As required by law, the Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligation arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 No work shall be covered until the Engineer and Owner have been given written notice and have had the opportunity to examine the Work.

12.1.2 If a portion of the Work is covered contrary to the Engineer's or Owner's request or to requirements specifically expressed in the Contract Documents, it must be uncovered for the Engineer's and Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.3 If a portion of the Work has been covered which the Engineer or Owner has not specifically requested to examine prior to its being covered, the Engineer or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, uncovering, correction and replacement shall be at the Contractor's expense. If the non-compliant condition was caused by the Owner, the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Engineer or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.6, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner or Engineer to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Engineer shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within the time established in Paragraph 2.4 the Owner may correct the Work in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and Acceptance of the Work.

12.2.2.3 Corrected nonconforming Work shall have a new one-year period for correction, starting when the corrected Work has been accepted by the Owner.

12.2.3 The Contractor shall remove from the site portions of the Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 related only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be adjusted as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

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

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Contractor hereby binds itself, its partners, successors, assigns and legal representatives to the Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract or proceeds hereof without written consent of the Owner. If contractor attempts to make such an assignment without such consent, it shall be void and confer no rights on third parties; the Contractor shall nevertheless remain legally responsible for all obligations under the Contract. The Owner's consent to any assignment is conditioned upon Contractors entering into a written assignment which contains the following language: "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor and to claims and to liens for services rendered or materials supplied for the performance of the Work required in said Contract in favor of all persons, firms, corporations rendering such services or supplying such materials." Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such as assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Document. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE

13.3.1 All notices required to be given by the Contractor shall be made in writing. Written notice, when served by the Owner, shall be considered served if delivered in person to the Contractor, or delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available there under shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No Action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.4.3 Contractor shall carry out the work and adhere to the current construction schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Owner may otherwise agree in writing.

13.4.4 Contractor shall specifically incorporate the obligations of this Article 13 into the subcontracts, supply agreements and purchase orders for the Work and require the same of any Subcontractors of any tier.

13.5 TEST AND INSPECTIONS

13.5.1 Test, inspections and approval of portions of the Work required by the Contract Document or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with the Owner's designated testing entity. The Contractor shall give the Owner and the Engineer timely notice of when and where tests and inspections are to be made so that the Owner and the Engineer may observe such procedures. The Owner shall bear cost of tests, inspections or approvals.

13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Engineer or the Owner will instruct the Contractor to make arrangements for such additional testing, inspection or approval by the Owner's independent testing entity, and the Contractor shall give timely notice to the Owner and the Engineer of when and where tests and inspections are to be made so that the Owner and the Engineer may observe such procedures. Such cost, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraph 13.5.1 and 13.5.2 reveal failure of the portions of Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspections or approvals shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and the Engineer.

13.5.5 If the Engineer or the Owner are to observe test, inspections or approvals required by the Contract Documents, the Engineer or Owner will do so and, where practicable, at the normal place of testing.

13.5.6 Test or inspections conducted pursuant to the Contract Documents shall be made to avoid unreasonable delay in the Work.

13.5.7 Payments due and unpaid under the Contract Document shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located and in conformance with New Mexico statutes.

13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.6.1 As between the Owner and Contractor

13.7.1.1 **Before Substantial Completion:** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, as described in Subparagraph 9.8.1, 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 such date of Substantial Completion;

13.7.1.2 **Between Substantial Completion and final Certificate for Payment:** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, 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 date of issuance of the final Certificate for Payment; and

13.7.1.3 **After Final Certificate for Payment:** As to acts or failures to act occurring after the relevant date of issuance of the Final Certificate for Payment, 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 date of any act or failure to act by the Contractor pursuant to and Warrant provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.7.1.4 **Equal Employment Opportunity:** The Contractor agrees not to discriminate against any employee or applicant for employment because or race, color, religion, sex, national origin or sexual preference, in accordance with U.S. Executive Order 11246, as amended, and N.M. Executive Order 85-15. If the Contract constitutes a federally assisted construction contract within the meaning of 41 C.F.R. 60-1.3 (1987), then the equal opportunity clause of 41 C.F.R. 60-1.4 (b) is incorporated herein by reference.

13.8 WAGE RATES

13.8.1 **Minimum Wage:** Minimum wages will be paid as determined by the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, or as determined by the Office of the Labor Commissioner, State of New Mexico, Santa Fe, New Mexico, as following hereinafter. The minimum wages to be paid on the project will be the higher of the Wage Determinations for each class of laborers and mechanics. All rules and regulations pursuant to State and/or Federal Labor Laws will apply to this work.

13.8.2 Payment of Employees and Weekly Payrolls: Attention of bidders is called to the fact that minimum wage rates to be paid various classes of laborers and mechanics, if based upon wages determined by the State Labor Commission, will be in accordance with the 6-6-6 N.M.S.A. 1953 Compilation.

13.8.2.1 Following public hearings, the rule on submission of payrolls, contained in Paragraph 4 of Part II, reads as follows: "The contractual provision will require that the Contractor and each Subcontractor will deliver or mail copies of the certified weekly payrolls, prepared in accordance with these regulations, to the Office of the Labor Commission, no more than five working days following the close of the Payroll Period." It is further stated that such payrolls will depict the decision number for this Project and the County in which the work is being performed.

13.8.2.2 The scale of wages to be paid will be posted by the Contractor in a prominent and easily accessible place at the job site. Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, will not be constructed unless an employer agrees to make contribution to approved apprentice and training programs in New Mexico in which the employer is a participant, or to the public works apprentice and training program fund administered by the Public Works Bureau of Labor and Industrial Division of the Labor Department. Contributions will be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the Department of Labor.

13.8.3 NEW MEXICO STATUE RELATING TO RESIDENCE REQUIREMENTS FOR PUBLIC EMPLOYEES AND THOSE EMPLOYED ON PUBLIC WORK PROJECTS

13.8.3.1 Residential Preference: In accordance with Section 13-4-2, N.M.S.A. 1978, as amended, any Bidder desiring the preference of "Resident Contractor" must possess all required licenses and meet the residency requirements at the time the contract is advertised for bids. Contractor seeking to qualify as a resident contractor must also have completed the application form and submitted it to the state-purchasing agent prior to submission of their bid. The Resident Contractor's Certificate number must be received by the contractor by the time the Owner is ready to award the contract.

13.9 RECORDS

13.9.1 The Owner shall have access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for five (5) years after final payment or five (5) years after the final resolution of any ongoing disputes at the time of final payment. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors of any tier shall be required by Contractor to maintain records and to permit audits as required of Contractors herein.

13.10 MISCELLANEOUS GENERAL PROVISIONS

13.10.1 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligation shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

13.10.2 This Contract shall be interpreted, construed, enforced and regulated under and by the laws of the State of New Mexico. Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without invalidating of affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable. Contractor and Owner further agree that in the event any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, this Contract shall be reformed to replace such prohibited or invalid provisions or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

13.10.3 Contractor and Owner each agree that the State of New Mexico District Court of the County where the Project is located shall have exclusive jurisdiction to resolve all Claims and any issue and disputes between Contractor and Owner. Contractor agrees that it shall not file any petition, complaints, lawsuit or legal proceedings against Owner in any other court other than the State of New Mexico District Court for the County where the Project is located.

13.10.4 Owner'*s* total liability to Contractor and anyone claiming by, through, or under Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of Owner and in part by the fault of contractor or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Contractor and all other entities and individuals as determined on the basis of comparative fault principles**.**

13.10.5 Contractor agrees that Owner shall not be liable to Contractor for any special, indirect, incidental, or consequential damage whatsoever, whether caused by Owner's negligence, fault, errors or omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages**.**

13.10.6 Nothing contained in this Contract or the Contract Documents shall create any contractual relationships with or cause of action in favor of a third party against the Owner.

13.10.7 No member or office of City of Aztec incurs or assumes any individual or personal liability under the Contract or by reason of the default of the Owner in the performance of any terms thereof. Contractor releases and discharges all members or officers of the City of Aztec from any liability as a condition of and as consideration for the award of the Contract to Contractor.

13.10.8 Owner reserves the right to conduct building commissioning activities during the construction, testing and acceptance phases of the Work.

13.10.8.1 If the Owner includes the building commissioning plan, including a building components testing schedule, in the plans and specifications for the Project, Contractor shall include all costs associated with commissioning support in the base bid for the Project and Contractor's schedule shall reflect all time associated with the commissioning plan, including a building component testing schedule, commissioning and commissioning support in Contractor's schedule. The Contractor shall not be entitled to a change in the Contract price or time for Owner's commissioning activities unless, without the fault of or delay by the Contractor or those for whom Contractor is responsible, the commissioning agent fails to conduct the component testing in accordance with the building component testing schedule. Should the Contractor:

.1 fail to complete component testing checklists in accordance with the commissioning plan;
.2 install components or systems in such a manner that they fail to achieve the minimum levels of performance set forth in the commissioning plan; or
.3 fails to provide equipment and other components of systems that do not meet the minimum performance levels required by the specifications or identified in the submittals

Contractor shall not be entitled to any time extension or adjustment of the contract price for correction of such conditions and shall be liable to Owner for any additional costs of commissioning caused by such conditions in addition to any liquidated damages for delay in Project completion.

13.10.8.2 If, after entering into the Agreement, the Owner determines that building commissioning shall be required, the Contract shall be modified by Change Order or Construction Change Directive as provided in Article 7.

ARTICLE 14: TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under contract with the Contractor, for any of the following reasons:

14.1.1.1 Issuance of an order of a court or other public authority having jurisdiction, which requires all Work to be stopped;

14.1.1.2 An act of government, such as a declaration of national emergency, which requires all Work to be stopped;

14.1.1.3 The Work is stopped pursuant to Subparagraph 9.7.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days (165 days for base bid and alternate #1) in any 365-day period, whichever is less. A condition to receiving the payment due under this Subparagraph 14.1.2, Contractor shall execute and deliver to the Owner such documents requested by the Owner, including the legal assignment of Contractor's contractual rights with respect to any Contracts or documents of Contractor pertaining to the Work. In addition, Contractor shall return all drawings, plans, specifications, and other materials pertaining to the Work to the Owner; and will further execute a full release, waiver and assignment of Contractor's rights in interest on a form acceptable to the Owner.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit, and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Document with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor refuses or fails to supply enough properly skilled workers or proper materials.

14.2.1.1 Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors, or otherwise fails to comply with the New Mexico Retainage Act (NMSA 57-28-1 et seq.).

14.2.1.2 Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or

14.2.1.3 Disregards the authority of the Owner's Representative or Engineer;

14.2.1.4 Fails to furnish the Owner with assurance satisfactory to the Owner evidencing the Contractor's ability to complete the work in compliance with all the requirements of the Contract Documents.

14.2.1.5 Fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) consecutive days, except as permitted under the Contract Documents;

14.2.1.6 Fails to maintain a satisfactory rate of progress with the Work or fails to comply with approved progress schedules;

14.2.1.7 Otherwise is guilty of a substantial breach of the Contract Documents.

14.2.2 When any of the reasons described in Subparagraph 14.2.1.1 through 14.2.1.7 exist, the Owner, may without prejudice to any other rights or remedies and after giving the Contractor and the Contractor's surety seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety;

14.2.2.1 Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2 Accept assignment of subcontracts pursuant to Paragraph 5.4, and

14.2.2.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds cost of finishing the Work, including compensation for the Engineer's services and other expenses and damages incurred by the Owner and not expressly waived, such excess may be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

14.2.5 In exercising the Owner's right to secure completion of the Work under any of the provisions hereof, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods, and reasonableness of costs of competing the Work.

14.2.6 The rights of the Owner to terminate pursuant to Article 14.2 will be cumulative and not exclusive and shall be in addition to any other remedy provided by law or the Contract Documents.

14.2.7 Should the Contractor fail to achieve final Completion of the Work within fourteen (14) calendar days following the date of Substantial Completion, the Owner may exercise its rights under Article 14.2 or as mutually agreed between the parties.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and the Contract Time may be adjusted for increases in cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum may include profit. No adjustments shall be made to the extent.

14.3.2.1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

14.3.2.2 That an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall;

14.4.2.1 Cease operations as directed by the Owner in the notice.

14.4.2.2 Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work, and

14.4.2.3 Except for the Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

NOTICE OF AWARD

TO: _____

PROJECT: BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

DESCRIPTION: CONSTRUC CONCRETE BOX CULVERT

The OWNER has considered the BID submitted by you for the above described WORK in response to its advertisement for Bids dated December 21, 2015 and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of $_____ plus NMGRT.

You are required by the Information for Bidders to execute the Agreement within fifteen (15) days of the time of receipt of this Notice by you and to furnish any required CONTRACTOR'S PERFORMANCE BOND. Payment BONDS and certificates of insurance within fifteen (15) days from the time of receipt of this Notice by you shall constitute receipt as provided herein.

If you fail to execute the Agreement and to furnish said BONDS and certificates within the specified time from the time of receipt of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your BID as abandoned and as a forfeiture of your BID BOND or bid guarantee. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER. Dated this

DATED THIS: _____

OWNER: City of Aztec

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

CONTRACTOR: _____

BY: _____

TITLE: _____

This is the _____ day of _____.

CONSTRUCTION AGREEMENT

Project Title: Lovers Lane Concrete Box Culvert
Project No: 2016-548
Contract Control No.: 2016-548

THIS AGREEMENT DATED _____ made and entered into by and between the City of Aztec, hereinafter called the "OWNER", and _____. hereinafter called the "CONTRACTOR".

WHEREAS, the City Commission of City of Aztec approved the bid on _____;

WHEREAS, pursuant to the Notice of Award, the Contractor as accepted the award and has submitted the required bonds; and,

WHEREAS, in consideration of the sum of $_____plus applicable taxes to be paid by the Owner to the Contractor at the time and in the manner hereinafter provided, the said Contractor has agreed and does hereby agree to furnish design, labor, tools, equipment, and material and to complete in every detail the following:

Lovers Lane Concrete Box Culvert
Project No. 2016-548
Contract Control No. 2016-548

The OWNER and the "CONTRACTOR" agree as follows:

To perform this contract and construct the work in accordance with the terms and conditions of the Contract Documents as defined in the General Conditions, Article 1 General Provisions and including the following additional Documents:

Affirmative Action Program (applicable only where the OWNER has adopted such a program), and

Project Specifications, referred to in this contract, all of which are incorporated herein and made a part hereof.

Payments to be made by the Owner to the Contractor shall be made in the manner provided for in the General Conditions, Article 9 Payment and Completion and on the basis of the prices set out in the Bid Form.

The bidder agrees the work will be substantially completed **by April 15, 2016 or 60 days** from the date of the Notice to Proceed (whichever date comes first), as may be modified by change order, and work will be completed and ready for final payment by **April 29, 2016 or 10 days following substantial completion** from the date of the Notice to Proceed, as may be modified by change order.

The bidder agrees liquidated damages will be paid to the Owner for each day beyond substantial completion expiration in the amount of **$2,000.00 per calendar day** and **$250.00 per calendar day** for completion of remaining work and readiness for final payment beyond completion expiration date.

That, in the event any of the provisions of the Agreement are violated by the Contractor or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract, such notices to contain the reasons for such intention to terminate the Contract, and unless with ten (10) days after the serving of such notice upon the Contractor such violation shall cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety who shall have the right to take over and perform this Agreement, provided, however, that if the Surety does not commence performance thereof within thirty (30) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion of the Agreement for the account and at the expense of the Contractor, and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

The Contract Documents shall be executed with one (1) original maintained by the City of Aztec City Clerk, and one (1) certified copies, one of which will be distributed to the Contractor.

IN WITNESS whereof the parties have executed this contract.

_____

CONTRACTOR

By: _____
Duly Authorized Signature

By: _____
Printed Name

Title: _____

Date: _____

Signer has read the document and affirms that it true and complete and accurately represents the agreement of the parties

NOTARY PUBLIC SIGNATURE (REQUIRED)

State of New Mexico

County of San Juan

(SEAL) _____
Signature of notarial officer
My commission expires: _____

NM Taxation and Revenue Department
Taxpayer Identification Number

_____

Federal Taxpayer Identification or
Social Security Number

_____

City of Aztec Business License Number

_____

City of Aztec, Owner
A Municipal Corporation

By: _____
Title: City Manager

Date: _____

(SEAL)

ATTEST:

_____
City Clerk Karla Sayler CMC

_____
Date

CITY ATTORNEY APPROVED AS TO FORM:

_____
Larry T. Thrower

_____
Date

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

_____,

[Here insert the name and address or legal title of the CONTRACTOR]

as Principal, hereinafter called the CONTRACTOR, and

_____,

[Here insert the legal title of the surety]

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 City of Aztec, 201 West Chaco, Aztec, New Mexico 87410 as Obligee, hereinafter called the OWNER, in the amount of _____ Dollars ($ _____), for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____ entered into a contract described as follows:**Lovers Lane Concrete Box Culvert** 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 obligations 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 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:

Complete the contract in accordance with its terms and conditions, or

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 said contract and any amendments thereto, less the amount properly 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.

Any suit under this bond must be instituted before the expiration of two years from the date on which final payment under the contract falls due, except that, with respect to express guarantees of a longer term, a suit thereon must be initiated within six months following the expiration of said express guarantees, if any.

Right of action with respect to any express guarantees, if any, in said contract shall accrue following completion and formal acceptance of the work under said 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.

Venue upon any suit brought upon this bond shall be in the District Court of San Juan County, New Mexico.

Signed and Sealed on: _____, 2015

In Presence of

_____

_____

[Contractor's Principal]

By: _____

Title: _____

Approved as to Form:

_____

Attorney for the Owner

_____

[Surety]

By: _____

Title: _____

Countersigned:

_____

[Surety's Authorized New Mexico Agent]

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

_____,

[Here insert the name and address or legal title of the CONTRACTOR]

as Principal, hereinafter called the CONTRACTOR, and

_____,

[Here insert the legal title of the surety]

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 City of Aztec, 201 West Chaco, Aztec, New Mexico 87410 as Obligee, hereinafter called the OWNER, in the amount of _____ Dollars ($ _____), for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____ entered into a contract described as follows: **Lovers Lane Concrete Box Culvert** 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 said contract, pursuant to Sections 13-4-18 through 13-4-20 NMSA 1978, whether said labor be performed and materials and supplies be furnished under the original contract or any contract thereunder, 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 New Mexico Statutes Annotated, 1978, 13-4-18 through 13-4-20, as amended, grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

The Surety, for value received, hereby expressly stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect the Surety's obligation on this bond; and the Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this agreement or to the work or specifications.

Venue upon any suit brought upon this bond shall be in the District Court of San Juan County, New Mexico.

This bond is issued simultaneously with another bond conditioned for the full and faithful performance of the contract.

Signed and Sealed on: _____, 2015

In Presence of

_____

_____

[Contractor's Principal]

By: _____

Title: _____

Approved as to Form:

_____

[Surety]

_____

By: _____

Attorney for the Owner

Title: _____

Countersigned:

_____

[Surety's Authorized New Mexico Agent]

This bond is issued simultaneously with performance bond in favor of contracting agency for the faithful performance of the contract.

CERTIFICATE OF LIABILITY INSURANCE

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER

THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A:	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
		☐				PERSONAL & ADV INJURY	$
		☐				GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		☐ POLICY ☐ PRO-JECT ☐ LOC					$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO					
		☐ ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		☐ SCHEDULED AUTOS					
		☐ HIRED AUTOS				BODILY INJURY (Per accident)	$
		☐ NON-OWNED AUTOS					
		☐				PROPERTY DAMAGE (Per accident)	$
		☐					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
		☐				AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				☐ WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

© ACORD CORPORATION 1988

NOTICE TO PROCEED

TO: _____

PROJECT: BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT

DATE: _____

You are hereby notified to commence WORK in accordance with the Agreement dated _____ on or before_____. You are to substantially complete the WORK within 70 calendar days thereafter. The date of substantial completion is _____.

Complete work and readiness for final payment is within 80 calendar days. The date for work completion is _____.

Contractor Construction Schedule is to be submitted to Owner within 15 days of the Notice to Proceed.

OWNER: CITY OF AZTEC

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

BY: _____

TITLE: _____

DATE: _____

EMPLOYER IDENTIFICATION NO.: _____

Construction Change Directive

PROJECT: (Name and Address)

Change Directive No.:

Change Directive Date:

TO: (Contractor Name and Address)

Contract No.:

Contract Date:

You are hereby directed to make the following change(s) in this Contract:

Proposed Adjustments

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:
   - ☐ Lump Sum ☐ increase ☐ decrease of $ _____
   - ☐ Unit Price of $ _____ per _____
   - ☐ As Follows:

2. The Contract Time is proposed to be ☐ adjusted ☐ remain unchanged The proposed adjustment, if any, is an ☐ increase ☐ decrease of_____working days.

   When signed by the State and received by the Contractor, this document becomes effective immediately as a Construction Change Directive (CCD), and the Contractor shall proceed with the change(s) described above.
   Signature by the Contractor indicates the Contractor's agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this Construction Change Directive.

3. Preparation and execution of an appropriate Change Order will follow.

City		**Contractor**	
By:	_____	By:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

CONTRACT CHANGE ORDER

Change Order Requested by (OWNER – CONTRACTOR) _____

PROJECT:_____

CHANGE ORDER NO. _____

CONTRACTOR: _____ DATE:_____

ADDRESS: _____ FINANCE OFFICE NO. _____

_____

OWNER: CITY OF AZTEC

ADDRESS: City of Aztec 201 West Chaco, Aztec, New Mexico 87410

REVISED CONTRACT AMOUNT

1. Original Contract Amount ..... $ _____
2. Total Contract Amount Including Previously Approved Change Orders (increase and/or deductions)(Including Tax)..... $ _____
3. Amount of This Order (Estimated) or (Firm) (Including Tax) ..... $ _____
4. Total Revised Contract Amount to Date (Including Tax) ..... $ _____
5. Monetary Basis of Change Order
   A. Unit Bid Price ..... $
   B. Cost Plus _____%..... $
   (Percentage to be filled in by OWNER)
6. Original Contract Completion Date ..... _____calendar days from notice to proceed
7. New Completion Date Due to this Change Order_____calendar days from notice to proceed

(Note: Items 2-5 Incl., to be filled in only if Change Order involves a monetary change.)

REASONS FOR CHANGE ORDER INCLUDING ESTIMATED OR FIRM COST BREAKDOWN (See attached sheets _____ to _____).

The work covered by this order shall be performed under the same terms and conditions as that included in original contract.

CHANGE ORDER ACCEPTED AND APPROVED.

BY_____

DATE_____

CONTRACTOR

CHANGE ORDER RECOMMENDED

BY_____

DATE_____ ENGINEER

CHANGE ORDER APPROVED BY
CITY OF AZTEC
OWNER ON _____

BY: _____

TITLE: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

Name of Project: Lovers Lane Concrete Box Culvert

Project #: Bid # 2016-548

Contract Control No: 2016-548

Through this correspondence we are documenting beneficial acceptance of the above referenced project completed substantially in accordance with the plans and specifications on _____.

The City of Aztec will accept full maintenance responsibilities commencing _____, pending completion of warranty work if required, and a final warranty inspection.

PUNCH LIST:

A list of items to be completed or corrected, prepared by the Engineer, checked and augmented as required by the Prime Contractor or Construction Manager is appended hereto. The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the Contract documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____/__/_____. The punch list consists of ____ items.

Contractor	Representative	Date
Engineer	Representative	Date
Owner: City of Aztec	Representative	Date

Attachments:
Punch List

RELEASE AND WAIVER OF LIENS

With reference to Contract Control No. **2016-548**, Project No. **2016-548** dated _____**,20**_____**,** as amended, between the undersigned Contractor _____ and **City of Aztec** for **Lovers Lane Concrete Box Culvert**, the Contractor hereby certifies that is has made full payment of all cots, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises or used in connection with its performance under said Contract.

The Contractor further certifies that to its best knowledge and belief, each of its subcontractors and material men has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplies to the foregoing premises or used by them in connection with said Contract. In consideration of **$**_____ constitutes complete and total payment, the Contractor hereby remises, releases and forever discharges City of Aztec, its premises and property and the Engineer, from all bills, liens and claims of every nature arising out of or in connection with the performance of said Contract and any amendments thereto, except as set forth in the Contractor's Statement Concerning Claims.

The foregoing shall not relieve the Contractor of its obligations under the provisions of said Contract, as amended, which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

Executed this _____ day of _____, 20_____.

State of _____

County of _____

Subscribed and Sworn to me this _____ day of _____, 20 ____.

_____
Notary

_____
Notary Commission Expires

_____
Name of Contractor

_____
Signature of Authorized Representative for Contractor

_____
Printed Name

_____
Title

SUBCONTRACTOR'S RELEASE AND WAIVER OF LIENS

THE UNDERSIGNED, for and in consideration of the sum indicated below, the receipt whereof is hereby acknowledged, which is in full/partial payment of all sums due him for work performed and/or materials furnished in connection with the following described project, does hereby waive any right which he may have at this date to file any liens, mechanics, materialmen, or otherwise against said property for or by reason of any work performed or any materials furnished in undersigned affirms that there are no amounts included in this payment for labor or materials furnished by other parties which can become a lien against the described project.

PROJECT: **BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT**
LIEN WAIVER DATE: _____
AMOUNT: _____
( ) FULL ( ) PARTIAL
TYPE OF WORK AND/OR MATERIAL FURNISHED _____

_____

_____

Executed this _____day of _____ , 20 _____ .

_____	_____
CONTRACTOR	SUBCONTRACTOR
_____	_____
_____	_____
Mailing Address	Mailing Address
_____	_____
Contractor Authorized Representative	Sub-Contractor Authorized Representative
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title

State of _____

County of _____

Subscribed and Sworn to me this _____ day of _____, 20 ____.

_____ My Commission Expires _____
Notary

CONTRACTOR'S STATEMENT CONCERNING CLAIMS

For the purpose of obtaining final payment of funds due me for the satisfactory completion of **BID 2016-548 LOVERS LANE CONCRETE BOX CULVERT** in conformity with the contract documents, including the plans and specifications or authorized modifications thereof, I hereby certify that all lawful claims for labor performed and material, supplies and services furnished by me or any sub-contractor for the said work, have been fully paid or satisfied, with the exception of the following claims:

It is requested that final payment of funds due me under the contract be made.

Executed this _____ day of _____, 20_____.

State of _____

County of _____

Subscribed and Sworn to me this _____ day

of _____, 20 ____.

_____
Notary

_____
Notary Commission Expires

_____
Name of Contractor

_____
Signature of Authorized Representative for Contractor

_____
Printed Name

_____
Title

APPENDIX A: WAGE RATES

Lover's Lane Concrete Box Culvert: Wage Decision #SJ-15-1840 A

Install concrete culvert box at the crossing of Lover's Lane by the Lower Animas Irrigation Ditch

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

Effective September 24, 2015

Trade Classification	Base Rate	Fringe Rate
Bricklayer/Blocklayer/Stonemason	23.32	8.04
Carpenter/Lather	23.40	9.02
Cement Mason	17.11	6.32
Ironworker	26.12	14.02
Painter (Brush/Roller/Spray)	16.00	5.58
Electricians (outside)		
Groundman	21.28	10.53
Equipment Operator	30.54	12.94
Lineman/Wireman or Tech	35.94	14.34
Cable Splicer	39.52	15.28
Plumber/Pipefitter	28.30	4.07
Laborers		
Group I	12.20	5.30
Group II	12.50	5.30
Group III	12.90	5.30
Operators		
Group I	16.69	6.16
Group II	17.44	6.16
Group III	17.55	6.16
Group IV	17.63	6.16
Group V	17.75	6.16
Group VI	17.89	6.16
Group VII	18.27	6.16
Group VIII	18.50	6.16
Group IX	25.45	6.16
Group X	28.35	6.16
Truck Drivers		
Group I	13.32	0.26
Group II	13.52	0.26
Group III	13.72	0.26
Group IV	13.92	0.26

NOTE: SUBSISTENCE, ZONE AND INCENTIVE PAY APPLY ACCORDING TO THE PARTICULAR TRADES COLLECTIVE BARGAINING AGREEMENT. DETAILS ARE LOCATED AT WWW.DWS.STATE.NM.US.

SUSANA MARTINEZ
GOVERNOR

JOHN SANCHEZ
LT. GOVERNOR

CELINA BUSSEY
SECRETARY

STATE OF NEW MEXICO
DEPARTMENT OF WORKFORCE SOLUTIONS
121 Tijeras Ave NE Suite 3000
Albuquerque, NM 87102
Telephone (505) 841-4405
Fax (505) 841-4424

PUBLIC WORKS PROJECT REQUIREMENTS

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

Contracting Agency

- Ensure that all contractors/prime contractors wishing to bid on a Public Works project when the project is $60,000 or more are actively registered with the Labor Relations Division, Labor Enforcement Fund (LEF) prior to bidding.
- Provide completed Notice of Award (NOA) and Sub-Contractor list to Labor Relations Division promptly after the project is awarded.
- Provide updates to the Sub-Contractor list to the Labor Relations Division

General Contractor

- Provide to the Contracting Agency within 3 (Three) days of award a complete sub-contractor list and Statements of Intent (SOI) to pay Prevailing Wages for each contractor.
- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over $60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the owner/contracting agency.
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.
- Confirm the Wage Rate poster, provided by the Labor Relations Division, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) is sent to the Contracting Agency.

Sub-Contractor

- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over $60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the General Contractor(s).
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.

"AN EQUAL OPPORTUNITY EMPLOYER"

Additional Information

Reference material and forms for these requirements are available through the following New Mexico Workforce Solutions Web Link.
www.dws.state.nm.us/new/Labor_Relations/publicworks.html.

Additional Information

Additional information, requirements, and documents on these topics can be found through the Public Works web pages.

- Labor Enforcement Fund (LEF)
- Weekly Certified Payroll
- Public Works Apprenticeship and Training Fund (PWAT)
- Forms: Statement of Intent (SOI), Affidavit of Wages Paid (AWP)
- Prevailing Wage Rates (Base Rates, Fringe, and Apprenticeship Contributions)

CONTACT INFORMATION

Contact us for any questions relating to Public Works Projects.

Kim Kew Kim.Kew@state.nm.us or 505-841-4405
Otis Caddy LynnO.Caddy@state.nm.us 505-841-4406
Stacey Lowrey Stacey.Lowrey@state.nm.us 505-841-4412
Violet Miera Violet.Miera2@state.nm.us 505-841-4418

STATEMENT OF INTENT TO PAY PREVAILING WAGES
To Be Completed Before Construction Starts
All FIELDS ARE REQUIRED
FORM MUST BE SENT TO THE CONTRACTING AGENCY WITHIN 3 DAY OF THE AWARD

General Contractor Information		
Company Name:		
Address:		
City :	State:	Zip:
Phone:	Fax:	E-Mail:
Estimated Start Date:	**State Wage Decision Number:**	
Project Title:	Project Physical Address:	
Total Contract Amount:	Estimated Completion Date:	
Print Name:	General Contractor Signature:	
Sub Contractor Information	Sub Contract Amount:	Start date on this project:
Company Name:		
Address:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:
Print Name:	Sub Contractor Signature:	
2nd, 3rd, etc. Tier Sub-Contractor Information	Contract Amount:	Start date on this project:
Company Name:		
Address:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:
Print Name:	Tier Signature:	

I hereby certify that the above information is correct and that all workers I employ on this public works project will be paid no less than the Prevailing Wage Rate(s) as determined by the Department of Workforce Solutions, Labor Relations Division for this project as identified by the State Wage Decision Number. I understand that contractors who violate Prevailing Wage Laws (i.e., incorrect job classification, improper payment of prevailing wages, and/or overtime, etc.), are subject to debarment procedures and shall be required to pay any back wages due to workers. (Ref. Labor Relations Division, Public Works Minimum Wage Act Policy Manual (11.1.2 NMAC) & Public Works Minimum Wage Act (13-4-11 through 13-4-18, NMSA 1978).

_____ _____
Contractor's Signature Date

INSTRUCTIONS FOR COMPLETING STATEMENT OF INTENT TO PAY PREVAILING WAGES

GENERAL CONTRACTOR

1. Enter general contractor information and provide signature.
2. Enter State Wage Decision Number as listed in bid documents. (Example: BE-13-0123 B)
3. Enter project title - listed in bid documents.
4. Enter project physical address - exact location of project (job site).
5. Enter estimated start & completion dates of project.
6. Enter general contractor's contract amount.
7. All Statements must be sent to the Contracting Agency.

SUB CONTRACTOR

1. Enter general contractor information, but general contractor signature is not needed.

2. Enter sub contractor information as indicated and provide signature.
3. Enter sub contractor contract amount.

NOTE: A separate signed form is needed for each contractor.

2ND TIER SUB CONTRACTOR

1. Enter general contractor information, but general contractor signature is not needed.

2. Enter sub contractor information; subcontractor signature not needed.
3. Enter 2nd tier sub information and provide signature.
4. Enter 2nd tier contractors contract amount.

3RD TIER AND HIGHER CONTRACTOR

1. Attach a copy of this completed form & list the 3rd tier contractor information under the 2nd tier

APPENDIX B: PLAN SET

Lovers Lane Concrete Box Culvert plan set is posted separately and available
http://www.aztecnm.gov/purchasing/office.htm

APPENDIX C: TECHNICAL SPECIFICATIONS

Technical Specification

Lover's Lane Concrete Box Culvert

1. SCOPE

The general scope of the project is to install a 5' x 10' I.D. (inside dimension) concrete box culvert (CBC) at the crossing of Lover's Lane by the Lower Animas Irrigation Ditch. The CBC will be cast in place in accordance with all New Mexico Department of Transportation (NMDOT) standard drawings and specifications. The existing CBC has failed and it is imperative the new CBC is installed prior to the expected ditch opening April 15, 2015. The contractor will be responsible for preparing the site prior to installing the CBC including removal and replacement/compaction of sub-base materials. The City will remove the existing box culvert.

2. GOVERNING SPECIFICATION

Governing specifications for this project shall be the New Mexico Department of Transportation (NMDOT) *Standard Specifications for Highway and Bridge Construction, 2014 Edition.*

3. QUALITY CONTROL

Material and density testing of the roadbase placed for bedding will be conducted by GEOMAT, Inc. The Contractor shall coordinate with GEOMAT for required testing, and for prior approval of base material before any concrete is poured. (505)327-7928

The Contractor will not be required to furnish independent quality assurance on this project.

4. PAY ITEM

The work shall be paid for at the contract LUMP SUM AMOUNT for the item **"Construct Concrete Box Culvert"**. Payment will include removal of existing sub-base material and furnishing, transporting, placement and compaction of new backfill material, reinforcing steel, concrete, for all dewatering activities required to ensure the site is dry for the installation of concrete. Payment shall also include the installation of hand rails and for all labor, equipment, materials, tools and incidentals required to construct the Concrete Box Culvert in accordance with the plans and specifications.

5. CONCRETE

All concrete shall be CLASS "AA" – 4000 psi. Chamfer all edges ¾".

6. REINFORCING STEEL

All reinforcing steel shall be deformed bars conforming to AASHTO M-31, grade 60.

7. BEDDING MATERIAL

1 foot of compacted roadbase shall be installed by the contractor for bedding material. Roadbase shall be compacted to 95% of maximum density.

8. COVER OVER BOX CULVERT

The cover over the box is considered to be from top of box to top of pavement. Cover for this box culvert is approximately 18 inches.

9. UTILITIES

Underground utility conflicts are not expected on this project since excavations will be very limited by the contractor. The Contractor is advised to call for utility locates before any excavation. If utilities are encountered, the contractor shall coordinate and cooperate with the City Engineer and all Utility Companies with regard to relocating, adjusting, replacing and/or repairing the utilities as necessary during construction.

The contractor is responsible for locating and protecting all underground, surface and aerial utilities, constructions and structures. Damages thereto by the contractor shall be replaced in-kind or better at no expense to the project.

10. MOBILIZATION

No payment will be made for mobilization on this project.

11. CONSTRUCTION

The Contractor is responsible for constructing the concrete box culvert in compliance with the NMDOT standards and specifications and is advised to read and understand all construction notes on the standard drawings. Any pay items on the NMDOT standard plans do not apply to this project. If portions of the box culvert are not covered by the NMDOT standards provided in the plan set, the contractor is responsible for obtaining the appropriate drawings from NMDOT.

Pedestrian Railing shall be constructed I accordance with the details provided. Color of the rail shall be determined by the City Engineer.

The Contractor is responsible for furnishing and installing all materials including the bedding material, whether identified or not including all site preparation, and other items necessary for the proper construction of the box culvert.

Installation of the box culvert and appurtenances shall be done in a workmanlike manner. It shall be the responsibility of the Contractor to stage construction appropriately. The area on Lover's Lane to the east of the project to North Rio Grande Ave may be used to store a minimal amount of construction materials such as rebar and small construction equipment. The contractor is responsible to obtain additional area if more construction staging/storage area is needed. However, **ALL access to the project site shall be from the east unless special approval is received in writing from the City Engineer**. The City assumes no responsibility or liability for material stored on the construction site.

12. TRAFFIC CONTROL

The City of Aztec will provide traffic control on Lover's Lane for the project.

13. EXISTING BOX CULVERT

The existing box culvert will be removed by the City.

14. PROJECT RECORD DRAWINGS

The Contractor shall maintain one set of red-lined prints of the Contract Drawings. These prints shall be updated as required to keep them current and will be reviewed for verification of updates by the Owner on a regular basis at least weekly. These Record Prints shall show the actual installation where installation varies from the original bid plans. The prints must be legible and neat and will become the property of the Owner upon final acceptance of the project.

Maintenance of the Record drawings is considered part of the project scope and costs associated therewith shall be included in the contract price. No separate payment shall be made for this service.

15. WARRANTY

The Concrete box culvert and work shall be warranted against defects in material and workmanship for a period of one year. The warranty period shall begin after final inspection and acceptance by the Owner.