

SECTION 1

DEFINITIONS AND TERMS

1.1 GENERAL

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

1.2 ABBREVIATIONS

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

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

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

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

VSF.....Vertical Square Feet (Foot)
WI.....Wrought Iron

1.3 AISC ABBREVIATIONS AND SYMBOLS:

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

1.4 DEFINITIONS

Addenda or Addendum - Any changes, revisions or clarifications of the Contract Documents which have been duly issued by OWNER to prospective Bidders Prior to the time of receiving Bids.

Agreement - The written Agreement between Owner and CONTRACTOR which establishes the terms of the Contract covering the Work and compensation for performance of the Work and incorporates all contract Documents. No Agreement shall be valid until signed by a person duly authorized to bind the CONTRACTOR and the Chief Administrative Officer of the City of Albuquerque.

Application for Payment - The form which is to be used in requesting progress payments and which is to include the schedule of values required by paragraph 14.1 and an affidavit of CONTRACTOR that progress payments heretofore received on account of the Work have been applied by the CONTRACTOR to discharge in full all of the CONTRACTOR'S obligations reflected in prior Applications for Payment.

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

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

Bid Proposal - The offer or proposal of the Bidder setting forth the prices for the Work to be performed, also referred to as the Bid.

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

Bonds - Bid, performance, and payment bonds and other instruments of security, furnished by CONTRACTOR and his surety in accordance with the Contract Documents.

Change Order - A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement. Drawings or Plans - The drawings which

show the character and scope of the Work to be performed and which have been prepared and approved by the ENGINEER and are referred to in the Contract Documents.

CONSTRUCTION COORDINATOR - The Mayor or the Mayor's designee responsible for the issuance of Barricading Permits and the inspection of traffic control devices in construction work zones.

Contract Document - The Agreement, Addenda, Advertisement for Bids, Instructions to Bidders, Bid Proposal, Bid Bond, Performance Bond, Labor and Material Payment Bond, the Certificates of Insurance, the Notice of Award, the Notice to Proceed, the General Conditions, Supplemental General Conditions, the Special Provisions, the Technical Specifications, the Supplemental Technical Specifications, the Reference Specifications, Plans and Drawings, and all Modifications, also referred to as the contract.

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

Contract Time - The number of days stated in the Bid Proposal for the completion of the work, computed as provided in paragraph 17.2

Contracting Agency - (See OWNER).

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

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

Defective - Defective means an adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval to which contract Documents refer, and specifically includes work that has been damaged prior to the ENGINEER'S recommendation of final payment and acceptance (pursuant paragraph 14.9) unless responsibility for the protection of such Work has been assumed by the OWNER at Substantial Completion (pursuant to paragraph 14.5 or 14.6). The terms Defect and Defective work shall apply to the Work, whether such Work is identified or otherwise discovered at or prior to final payment and acceptance (pursuant to paragraph 14.9) or during any correction period described in paragraph 13.7 of these General Conditions.

Debarment - Debarment of a Contractor means that the City of Albuquerque denies that Contractor the right to bid or offer to enter into a contract, other than a contract for Professional Services, with the City for a specified period of time.

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

ENGINEER - The person, either OWNER'S employee or agent or a licensed professional with whom OWNER has entered into an agreement, who is responsible for the engineering, architectural, and/or landscape architectural design or construction contract administration and inspection or both, acting directly or through duly authorized representatives. The definition of ENGINEER may also apply to the City's Construction Engineer.

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

General Conditions - Conditions which apply to all projects and which can be modified by the Supplemental General Conditions and/or Special Provisions.

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

Letter of Acceptance - A letter from the City to the Contractor stating the date the work is accepted and states the start date of the correction period.

Modification - (a) A written amendment to the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by ENGINEER in accordance with paragraph 9.4, or (d) a written order for a minor change or alteration in the Work issued by ENGINEER pursuant to paragraph 10.2. A Modification may only be issued after execution of the Agreement.

NMSHTD Standard Specifications - New Mexico State Highway and Transportation Department Standard Specifications for Road and Bridge Construction, latest edition.

Notice of Award - The written Notice by the Owner to the Bidder that it has submitted the apparent low successful Bid and that, upon compliance by the Bidder

with the conditions precedent to be fulfilled by the Bidder within the time specified, the OWNER shall prepare and deliver the Agreement to the Bidder in the event the OWNER elects to proceed to execute the Agreement. Issuance of the Notice of Award creates no contractual relationship between OWNER and Bidder.

Specifications, also Technical Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.

OWNER - The City of Albuquerque or a private land owner, for whom the Work is to be performed.

Professional Services - means the services of architects, archeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management, and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, and researchers and persons and businesses providing similar services.

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

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

Schedule of Values - A breakdown of the Material and Labor costs of all major components of a project or a bid item that is bid at Lump Sum unit price.

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

Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared

by CONTRACTOR, a sub-contractor, manufacturer, supplier, or distributor and which illustrate the equipment, material, or some portion of the Work.

Special Provisions - Conditions which are written for a specific project and which may modify the General Conditions.

Standard Details - Standard drawings showing City construction methods, materials, and practices, prepared by the City of Albuquerque.

Stop Work Order - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) directing the CONTRACTOR to stop work on the project. The contract time will also stop on that date.

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

Substantial Completion - the date as certified by ENGINEER when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with paragraph 14.9

Supplemental General Conditions - Conditions which are written to modify the General Conditions.

Supplemental Technical Specifications - Specifications which are written to modify the Technical Specifications.

Utility - Overhead or underground wires, pipe lines, conduits, ducts, or structures, operated and maintained in or across a public right-of-way or easement or private easement.

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

B. Private Utility - Owned and operated by a private company or corporation.

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

SECTION 2
PRELIMINARY MATTERS

2.1 EXECUTION OF AGREEMENT

2.1.1 Schedule: CONTRACTOR shall deliver to OWNER no less than seven (7) multiple originals of the Agreement between OWNER and CONTRACTOR, along with those Contract Documents specified by OWNER, within ten (10) days of CONTRACTOR'S receipt of the Notice of Award. In the event the OWNER elects to execute the Agreement, it shall do so within fifteen (15) days of its receipt of the Agreement and all required Contract Documents.

2.1.2 Extension of time: In the event the CONTRACTOR, OWNER, or both request an extension of the time in requirements in Section 2.1.1, above, such extension of time shall be agreed upon by OWNER and the Contractor in writing. No such extension of time shall be valid unless the extension includes an extension of the time in which the CONTRACTOR shall not be entitled to withdraw its Bid Proposal by no less than the same number of days of the extension of the Time requirements of section 2.1.1. In the event the OWNER refuses to agree to an extension of the time requirements of Section 2.1. 1 or the CONTRACTOR refuses to extend the time in which it shall not be entitled to withdraw its Bid Proposal, as required heretofore, the OWNER shall not be required to execute the Agreement and may cancel the contracting process, rescind the Notice of Award and terminate the procurement of the Work of the Project or award to the next lowest apparent successful Bidder.

2.1.3 Delivery of Agreement: OWNER, CONTRACTOR and ENGINEER shall receive an executed duplicate original of the Agreement and Contract Documents after execution of the Agreement by the Chief Administrative Officer of the City of Albuquerque.

2.2 DELIVERY OF BONDS AND CERTIFICATES OF INSURANCE

CONTRACTOR shall deliver to OWNER executed copies of the Agreement as required in Section 2.1.1 and CONTRACTOR shall deliver at the same time to OWNER the executed Performance Bonds, Labor and Material Payment Bonds, Certificates of Insurance, and any other Bonds and insurance certificates and insurance policies that may be required. Failure of the CONTRACTOR to deliver these documents correctly and fully completed and signed within the time required in Section 2.1.1 shall entitle OWNER to reject the Bid and rescind the Notice of Award. In such event,

OWNER shall be entitled to cancel the procurement of the Project, rebid, or award to the apparent next lowest Bidder.

2.3 COPIES OF DOCUMENTS

For use in execution of the Work, OWNER shall furnish to CONTRACTOR not less than seven (7) copies of the Contract Documents, unless otherwise provided in the Special provisions. Additional copies will be furnished upon request at the cost of reproduction.

2.4 CONTRACTOR'S PRE-START REPRESENTATIONS

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

2.5 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED

2.5.1 The Contract Time will commence to run on the thirtieth (30) day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Agreement, provided, however, that the Contract Time shall commence to run on the ninetieth (90) day after the day of Bid opening or the thirtieth (30th) day after the effective date of the Agreement whichever date is earlier, unless otherwise agreed upon by OWNER and CONTRACTOR. Any extensions of time agreed upon, by OWNER and CONTRACTOR pursuant to Sections 2.1. 1 through 2.1.3, above, which enlarge the time for

execution of the Agreement beyond ninety (90) days after the Bid opening shall automatically and without further Agreement between the OWNER and the CONTRACTOR enlarge the number of days before the Contract time shall commence to run by the same number of days as the extension of time to execute the Agreement.

2.5.2. Fully Executed Contract Required: In the event the OWNER and the CONTRACTOR do not fully execute the Agreement within the time and extensions thereof as required in Sections 2.1.1 through 2.1.3 and 2.5.1, above, the procurement of the work of the Project and contracting execution procedures shall be deemed cancelled and the Notice of Award shall be deemed rescinded.

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

2.6 STARTING THE PROJECT

CONTRACTOR shall start to perform his obligations under the Contract Documents on the date when the Contract Time commences to run. No Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.7. BEFORE STARTING CONSTRUCTION

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

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

2.7.3 Within twenty (20) days after delivery of the executed Agreement by OWNER to CONTRACTOR, but before starting the Work at the site, a conference will be held to review the above schedules, to establish procedures for handling Shop Drawings and other submissions, for processing Applications for Payment, and to establish a working understanding between the parties as to the Project. Present at the conference will be OWNER or his representative, ENGINEER, CONTRACTOR and his Superintendent.

SECTION 3

CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS

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

3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, he shall call it to ENGINEER'S attention in writing at once and before proceeding with the Work affected thereby; however, he shall not be liable to OWNER or ENGINEER for his failure to discover any conflict, error, or discrepancy in the Specifications or Drawings. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Agreement, Modifications, Addenda, Special Provisions, Bid Proposal, Advertisement for Bids, Instructions to Bidders, Supplemental General Conditions, General Conditions, Supplemental Technical Specifications, Specifications, Drawings and Standard Drawings. Dimensions given on plans or which can be calculated will govern over scaled dimensions. Construction detail drawings shall govern over scaled dimensions and over other drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials, or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

SECTION 4

AVAILABILITY OF LANDS; PHYSICAL
CONDITIONS; REFERENCE POINTS

4.1 AVAILABILITY OF LANDS

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

4.2 PHYSICAL CONDITIONS--SURVEY
AND REPORTS

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

4.2.2 GEOTECHNICAL INVESTIGATIONS:

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

4.3 UNFORESEEN PHYSICAL
CONDITIONS

CONTRACTOR shall promptly notify OWNER and ENGINEER in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. ENGINEER promptly investigate those conditions and advise OWNER in writing if further surveys or subsurface tests are necessary. Promptly thereafter OWNER shall obtain the necessary additional surveys and tests and furnish copies to ENGINEER and CONTRACTOR. If ENGINEER finds that the results of such surveys or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

4.4 SURVEYING

4.4.1 PERMANENT SURVEY MONUMENTS:

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

4.4.2 SURVEY STAKES:

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

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

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

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

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

4.4.3 SURVEY SERVICES:

Unless otherwise provided in the Special Provisions, OWNER will furnish and set construction stakes establishing lines and grades for curbs and gutters, structures and water and sewer lines, and will furnish CONTRACTOR all the necessary information relative to the lines and grades. CONTRACTOR shall give notice to ENGINEER not less than two (2) working days in advance of when he will require survey services in connection with the laying out of any portion of the Work.

SECTION 5

BONDS AND INSURANCE

5.1 BID, PERFORMANCE, PAYMENT, AND OTHER BONDS

5.1.1 All Bidders shall furnish with their Bid Proposals a bid bond in the amount of five percent (5%) of the total amount of the bid, in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U. S. Treasury Department.

5.1.2 CONTRACTOR shall furnish Performance and Payment Bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price and (except as otherwise provided in the Contract Documents) in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Performance Bond shall also include coverage for the Guarantee Period (see paragraph 13.7). The Surety on the Performance Bond shall furnish a waiver whereby he consents to the progress or partial payment to CONTRACTOR of amounts for materials under the provisions of paragraph 14.2 of these General Conditions, and acknowledges, in accordance with paragraphs 14.6 and 14.10 that such payment, whether or not in strict compliance with these provisions shall not preclude or stop OWNER from showing the true character and quantity of the materials furnished or from recovering from CONTRACTOR or his sureties such damages as OWNER may sustain by reason of deficiency in quantity of the materials with respect to which a progress payment was made .

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

5.2 INSURANCE

5.2.1 GENERAL CONDITIONS: CONTRACTOR shall procure and maintain in full force and effect during the life of this Contract, such insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and they shall be in a form satisfactory to OWNER and properly filed and approved by the Superintendent of Insurance, State of New Mexico. The pro-rata cost of required insurance shall be included in the prices bid for the Work and no additional compensation will be made therefore. CONTRACTOR shall furnish OWNER a minimum of seven (7) copies of certificates of required insurances (or copies of insurance policies if OWNER calls for them). All certificates of insurance (or policies) shall provide that thirty (30) days' written notice be given to the Director, Risk Management Department, City of Albuquerque, Box 470, Albuquerque, New Mexico 87103, before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time. If part of the Contract is sublet, CONTRACTOR shall:

5.2.1.1 Include any and all subcontractors in his insurance policies; or

5.2.1.2 Require the Subcontractor to secure insurance to protect himself against all hazards enumerated herein which are not covered by CONTRACTOR's policies.

5.2.2 APPROVAL OF INSURANCE: Even though a "Notice to Proceed" may have been given, no contractor or subcontractor shall begin any work under this Contract until the required insurance has been obtained and the proper certificates (or policies) filed with OWNER. Neither approval nor failure to disapprove certificates, policies or the insurance by OWNER shall relieve CONTRACTOR or any subcontractor of full responsibility to maintain the required insurance in full force and effect.

5.2.3 COMMERCIAL GENERAL LIABILITY INSURANCE INCLUDING AUTOMOBILE

5.2.3.1 CONTRACTOR shall procure and maintain during the life of this Contract a comprehensive commercial general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed for OWNER by CONTRACTOR, including coverage for collapse (C), explosion (X), and underground (U) liability coverage, coverage for the user of all owned, non- owned, hired automobiles, vehicles, and other equipment both on and off work, and contractual liability coverage which shall specifically insure the indemnification provisions of this Contract.

5.2.3.2 The above requirements shall include, but shall not be limited to, protection against:

5.2.3.2.1 Damage to, or destruction of, public and private property including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, gas service connections, sanitary sewers, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipe lines, storm drains, storm inlet lines, including all appurtenances thereto while located below the surface of the ground, including injury or death, to person or persons caused by CONTRACTOR's operations, including blasting and trenching-backfilling-tamping with or without the use of mechanical equipment; and

5.2.3.2.2 The collapse of, or structural damage to, a building, house or structure, including power-telephone-telegraph-fire alarm-street-light poles, curb and gutter and sidewalk, on public or private property, and destruction of, or damage to, other public and private property resulting there from, including injury or death to person or persons and all caused by CONTRACTOR's operations in the removal of other buildings, structures, including their supports, trees and utility poles, or by excavation, including blasting, and trenching-backfilling-tamping with or without use of mechanical equipment. "Other public and private property" as used above shall include lawns, plants, flowers, trees, fences, yards, walls, etc.

5.2.4 OWNER'S PROTECTIVE PUBLIC LIABILITY INSURANCE:

5.2.4.1 CONTRACTOR shall procure and maintain during the life of this Contract, an OWNER's protective public liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence.

5.2.4.2 The policy will be written with OWNER and ENGINEER as the named insured and will provide coverage for OWNER's and ENGINEER's officers and employees while acting within the scope of their duties against all claims arising out of or in connection with the work to be performed.

5.2.5 WORKMEN'S COMPENSATION INSURANCE:

CONTRACTOR shall comply with the provisions of Workmen's Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. CONTRACTOR shall procure and maintain during the life of this Contract, complete Workmen's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. With respect to Workmen's Compensation Insurance, if CONTRACTOR elects to be self-insured, he shall comply with the applicable requirements of law. If any portion of the Work is to be sublet, CONTRACTOR shall require the Subcontractor similarly to provide such coverage (or qualify as a self- insured) for all latter's employees to be engaged in such Work. CONTRACTOR shall save harmless OWNER and ENGINEER, its officers, agents and employees from any claims or actions occasioned by failure of CONTRACTOR to comply with the provisions of this subparagraph. It is agreed that with respect to all Workmen's Compensation Insurance, the CONTRACTOR and its insurer shall waive any right of subrogation it may acquire against the OWNER, ENGINEER, and their officers, agents and employees by reason of any payment made on account of injury, including death resulting there from, sustained by any employee of the insured, arising out of the performance of the contract .

5.2.6 ADDITIONAL INSURANCE

5.2.6.1 Builders Risk Insurance: The Contractor shall procure and maintain during the life of the Contract "Builders Risk," installation floater, boiler and

machinery and/or property insurance or insurance of an equivalent nature, in an amount equal to the full price of this Contract to cover the Work of the Contract for fire, theft, extended coverage, vandalism, and malicious mischief. Such coverage shall continue until the Work or any part of the work is accepted by the Owner. In the event of partial completion of the Work, the coverage may be reduced proportionally to the value of such work. The amount of insurance procured for the work of this contract in the subsequent Section 5.2.6.2, "Property Insurance" may be deducted from the amount of insurance required under this Section only to the extent that the combined coverage equals the full amount of the Contract Price as shown on the Agreement, Page AG-1 of the contract Documents. The Owner shall be provided a certificate of insurance, (or copies of insurance policies if OWNER calls for them) for all coverage required under this Section and the subsequent Section 5.2.6.2. When applicable, the policy shall provide coverage for the storage and the transport of materials, equipment and supplies of any kind whatsoever to be used on or incidental to the Agreement. The City shall be named as a loss payee with a loss payable clause stating that "loss, if any, shall be payable to the City of Albuquerque as its interest may appear."

5.2.6.2 Property Insurance: If the Contract includes bridge, culvert or channel lining work, either new construction or repair work, CONTRACTOR shall procure and maintain during the life of such work until the work is accepted by OWNER, property insurance upon the entire channel work to the full insurable value thereof. Such insurance shall include the interest of OWNER, CONTRACTOR, and SUBCONTRACTORS and shall be on the "all risk" basis, specifically including the perils of fire, extended coverage, theft, vandalism, malicious mischief, flood and earthquake. The deductible for the flood and earthquake coverage shall not be greater than twenty percent (20%) of the insurable value of the work, except that it shall not be less than Twenty-Five Thousand Dollars (\$25,000.00).

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

5.2.8 CONTRACTOR'S insurer shall have an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current Best's rating, unless specifically waived in writing by the Director of Risk Management, City of Albuquerque.

5.3 ADDITIONAL BONDS AND INSURANCE

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

SECTION 6

CONTRACTOR'S RESPONSIBILITIES

6.1 SUPERVISION AND SUPERINTENDENCE

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

6.1.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, that has a minimum of three (3) years' experience on the same or similar type of projects, who shall not be replaced without written notice to OWNER and ENGINEER (Written Notice Only, NOT Consent) except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

6.2 LABOR, MATERIALS AND EQUIPMENT

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

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

6.2.2.1 CONTRACTOR shall provide, at CONTRACTOR's expense, ample and approved supplies of water of proper quality at convenient points for all operations to be carried on under this Contract. CONTRACTOR may withdraw water from fire hydrants for this Contract in accordance with the most

recent "Public Use of Fire Hydrants Ordinance", and "Water and Sewer Rates Ordinance."

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

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

6.3 SUBSTITUTE MATERIALS OR EQUIPMENT If the Specifications, laws, ordinances, or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute that is equal to any material or equipment specified, and if CONTRACTOR wishes to furnish or use a proposed substitute, he shall make written application to ENGINEER for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified; stating whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. In the written application for substitution the CONTRACTOR shall accept all cost of any redesign of any part of the project required to accommodate the substituted item. No substitute shall be ordered or installed without the written approval of ENGINEER, who will be the judge of equality and may require CONTRACTOR to furnish such other data about the proposed substitute as he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as OWNER may require which shall be furnished at CONTRACTOR's expense. CONTRACTOR shall not be entitled to extra costs, Contract Time, or home office overhead for the time taken by Engineer to evaluate, approve or deny an application for substitution or redesign any part of the Project required to accommodate the substituted item .

6.4 CONCERNING SUBCONTRACTORS

6.4.1 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER may have reasonable objection or who has been debarred by the owner. A Subcontractor or other person or organization identified on the SFPA-1 form in the CONTRACTOR'S bid, or in writing to OWNER by CONTRACTOR prior to the Notice of Award and not objected to in writing by OWNER prior to the Notice of Award will be deemed acceptable to OWNER. Acceptance of any Subcontractor, other person, or organization by OWNER shall not constitute a waiver of any right of OWNER to reject defective work or work not in conformance with the Contract Documents .

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

6.4.3 If a CONTRACTOR desires to substitute a subcontractor that has been shown on the SFPA-1 form of his bid, the CONTRACTOR must follow the procedures in the SUBCONTRACTORS FAIR PRACTICE ACT if applicable. The CONTRACTOR is not entitled to a delay in the Commencement of the Contract Time or an increase in the Contract Price due to SFPA procedures being implemented, either before or after issuance of the Notice of Award .

6.4.4 CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any monies due any

Subcontractor or other person or organization, except as may otherwise be required by law. OWNER or ENGINEER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done in accordance with the schedule of values and/or bid proposal .

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

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

6.5 PATENT FEES AND ROYALTIES

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

6.6 PERMITS

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

6.7 LAWS AND REGULATIONS

CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work, including but not limited to the Americans With Disabilities Act of 1990 (Public Law 101-33 6, 104 Stat. 327, 42 U.S.C. Section 12101, et seq.). If CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he shall give ENGINEER prompt written notice thereof; and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to ENGINEER, he shall bear all costs arising there from; however, it shall not be his primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules, and regulations .

6.8 TAXES

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

6.9 USE OF PREMISES

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

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

6.10 RECORD DRAWINGS

CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to ENGINEER and shall be delivered to him for OWNER upon completion of the Project .

6.11 SAFETY AND PROTECTION

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety

precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

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

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

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

6.11.2 CONTRACTOR shall conduct his operations in a manner which will minimize interference with the normal use of property adjacent to the construction work and shall give owners of such property at least twenty-four (24) hours' notice of the commencement of work in the area abutting their property. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection of the property adjacent to the construction work. He shall notify owners of adjacent utilities at least 48 hours in advance when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in subparagraph 6.11.1.2 or 6.11.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER OR ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR. CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.9 that the Work is acceptable.

6.11.2.1 CONTRACTOR shall assume full responsibility for any damage (1) to the property and improvements thereon at the project site and (2) to

other property and improvements thereon used or damaged by the CONTRACTOR in the performance of the Work including damages sustained by the owner or occupant of such land or areas contiguous thereto. Should any claim be made against OWNER by such other property owners or occupants because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, defend, indemnify and hold OWNER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER to the extent based on a claim arising out of CONTRACTOR'S performance of the Work. This subsection shall also apply to claims asserted against OWNER based on CONTRACTOR'S alleged trespass on public or private property. This indemnification requirement shall be subject to the provisions of Section 6.15.3, which is incorporated herein as though set forth in full.

6.11.3 CONTRACTOR shall not trespass upon public or private property without proper authority to do so and shall at all times take proper precautions to protect public and private property from damage. Means of ingress and egress shall be provided for all persons living or working on streets in which work is being done. All sidewalks, public walkways and drainage gutters/drainage ways shall be open, and fire hydrants and water system valves shall be left accessible for use at all times.

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

6.11.5 WEATHER CONDITIONS

In the event of temporary suspension of the Work or during inclement weather, or whenever ENGINEER shall direct, CONTRACTOR shall, and shall cause his Subcontractors to protect carefully all of the Work and the materials and equipment to be incorporated therein, whether in storage on or off the site, against damage, injury or loss from the weather. If, in the opinion of ENGINEER, any of the Work or materials or equipment to be incorporated therein shall have been damaged or injured or OWNER has suffered any loss by reason of failure on the part of CONTRACTOR or

any of his subcontractors so to protect the Work and materials and equipment to be incorporated therein, all such damage, injury or loss shall be promptly remedied at the expense of CONTRACTOR. Until the Project is accepted by OWNER, CONTRACTOR shall be responsible for protecting completed work, work in progress, equipment, materials and property from storm water, wind, erosion, sediment, and related elements. All damage, injury or loss resulting from storm water, wind, erosion, sediment, or related elements shall be promptly corrected at CONTRACTOR'S expense.

6.12 EMERGENCIES

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

6.13 SHOP DRAWINGS AND SAMPLES

6.13.1 After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for review and approval those submittals shown in Section 1502 of the Supplemental Technical Specifications, in accordance with accepted schedule of Shop Drawing submissions nine (9) copies (or, at ENGINEER's option, one reproducible copy) of all Shop Drawings, including the Contractor's proposed trenching systems (if required), which shall have been checked by and stamped with the approval of CONTRACTOR and identified as ENGINEER may require. The purpose of the Shop Drawings is to demonstrate to ENGINEER that CONTRACTOR understands the design concept by indicating which equipment and materials he intends to furnish and install, and by detailing the fabrication and installation scheme he intends to use. All such data submitted shall include type, size, number required, dimensions, specified performance and design criteria, materials and similar data as required by the Contract Documents.

6.13.2 All data shall be submitted to the ENGINEER within thirty (30) days after receipt of the Notice to

Proceed in strict accordance with the following procedures:

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

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

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

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

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

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

any Shop Drawing or sample shall constitute a representation to OWNER and ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or he assumes full responsibility for doing so and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents, and/or agrees to pay all cost of re-designing or modifying other items to accommodate the item(s) submitted.

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

6.13.8 ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to such deviation at the time of submission and ENGINEER has given written approval to the specific deviation, nor shall any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings. If deviations, discrepancies or conflicts between Shop Drawings and Specifications are discovered either prior to or after Shop Drawing submittals are processed by ENGINEER, the Contract Drawings and Specifications shall govern the Work.

6.14 CLEANING

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

6.15 INDEMNIFICATION

6.15.1 CONTRACTOR agrees to defend, indemnify and save harmless OWNER and ENGINEER and their

officers, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of the performance of the Work by CONTRACTOR, or by reason of any act or omission, neglect or misconduct of CONTRACTOR, his agents or employees or any Subcontractor, his agents or employees. This indemnity provision shall equally apply to injuries to CONTRACTOR'S employees. This indemnification provision is subject to the limitations and provisions of Section 56-7-1 NMSA 1978. Claims shall include claims based on contracts of indemnity between the OWNER and a third party that cover liability of the third party for injury or damage received or sustained by any person, persons or property arising out of the performance of the Work by CONTRACTOR, or by reason of any act or omission, neglect or misconduct of CONTRACTOR, his agents or employees, or any Subcontractor, his agents or employees.

6.15.2 In any and all claims against OWNER or ENGINEER or any of their officers, agents or employees by any employees of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.15.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under Workmen's Compensation acts, disability benefit acts, or other employee benefit acts.

6.15.3 The obligations of CONTRACTOR under paragraphs 6.15.1 and 6.15.2 shall not extend to the liability, claims, damages, losses or expenses, including attorney fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee, or the giving of or the failure to give directions or instructions by the indemnitee, or the agents or employees of the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. CONTRACTOR is not required to indemnify the OWNER and Engineer for the negligence, act or omission of the OWNER and Engineer and their agents and employees or any legal entity for whose negligence, acts or omissions OWNER or Engineer may be liable.

6.16.1 The Contractor shall, without additional expense to Owner, be responsible for obtaining any necessary licenses and permits required by law or regulation, and comply with all federal, state, municipal law, code, ordinance and regulation applicable to the performance of the Work in connection with hazardous material. The Contractor shall be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, and the public, and the property of others. The Contractor shall be responsible for all materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of work which may have been specifically accepted by Owner under the Contract.

6.16 HAZARDOUS MATERIALS

SECTION 7

WORK BY OTHERS

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

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

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

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

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

SECTION 8

OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.

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

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

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

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

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

SECTION 9

ENGINEER'S STATUS DURING CONSTRUCTION

9.1 OWNER'S REPRESENTATIVE

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

9.2 VISITS TO SITE

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

9.3 PROJECT REPRESENTATION

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

9.4 CLARIFICATIONS AND INTERPRETATIONS

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

9.5 REJECTING DEFECTIVE WORK

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

9.6 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS.

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

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

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

9.7 DECISIONS ON DISAGREEMENT

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

9.7.2 The rendering of a decision by ENGINEER pursuant to paragraph 9.7 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.11) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such claim, dispute or other matter.

9.7.3 CONTRACTOR shall continue his performance of the Work and adhere to applicable progress schedules during all disputes or disagreements with the OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted in Section 15 or as CONTRACTOR and OWNER may otherwise agree in writing.

9.1 LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

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

9.8.2 Wherever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used, to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.8.3 and 9.8.4.

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

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

SECTION 10

CHANGES IN THE WORK

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

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

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

10.4 Additional Work performed without authorization of a Field Order/Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.12 and except as provided in paragraphs 10.2 and 13.4.2.

10.5 OWNER shall execute appropriate Change Orders prepared by ENGINEER covering changes in the Work which are covered by a Field Order, or required by OWNER, or required because of

unforeseen physical conditions or emergencies, or because of uncovering Work found not to be defective, or as provided in paragraph 11.9, or because of any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is recommended by ENGINEER and accepted by OWNER. When possible and practical the OWNER shall process Change Orders in a timely manner to facilitate payment to the CONTRACTOR for completed authorized changes in the work.

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

SECTION 11

CHANGE OF CONTRACT PRICE

11.1 COMPENSATION

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

11.2 CHANGE ORDER

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

11.3 VALUE OF WORK

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

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

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

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

11.4 COST OF THE WORK (INCLUSION)

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

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by OWNER.

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

11.4.3 Payments made by CONTRACTOR to the subcontractors for work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to OWNER who will then determine, with advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Cost of the Work shall be determined in accordance with paragraphs 11.4 and 11.5. All

subcontracts shall be subject to the other conditions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

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

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

11.4.5.3 Rentals of all construction equipment, machinery and the parts thereof whether rented from the Contractor or other rental agencies will be authorized by the ENGINEER and approved by the OWNER. The rate for rental equipment, machinery and the parts thereof will be computed and paid by the City of Albuquerque based on the following:

11.4.5.3.1 In cases where the piece of equipment to be used, whether specialized or not, is rented or leased from an outside agency and used in the execution of negotiated or force account work, a reasonable rental rate agreed upon in advance by the CONTRACTOR and the ENGINEER may be allowed upon presentation of the rental agency's quotation. To the approved rental rate, the established Hourly Operating Costs as listed in the current Blue Book (Rental Rate Blue Book in effect at the time of equipment use, published by Equipment Guide Book Co., Palo Alto, California) will be added; to this total an additional 15% will be added for administering this item.

11.4.5.3.2 In cases where the piece of equipment to be used, whether specialized or not, to be used is owned by the contractor, the rental rate will be computed as follows:

City of Albuquerque (COA) Equipment Rental Rate = Blue Book Hourly Rate X 0.50 + Blue Book Hourly Operating Cost.

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

A. Manufacturer's identification plates attached to equipment shall be used insofar as possible to determine identification and capacities of the designated items of equipment. Where the equipment is not provided with such plates, the CONTRACTOR will be required to supply written statements certifying the equipment identification and capacity as shown by his equipment inventory. The ENGINEER'S records shall be completed in full to include type, capacity and horsepower for the equipment used in order to properly correlate the equipment with that described in the Rental Rate Blue Book schedule. The listed Blue Book rates are the maximum for equipment of modern design and in good working condition. Equipment shall be so handled and used to provide normal output and production.

B. Most commonplace items of equipment are listed in the Blue Book. In cases where the piece of equipment to be used is not listed in the Blue Book, the rental rate will be established by requesting a rate from Equipment Guide Book Company or by using the Blue Book Rental Rate for a comparable piece of equipment being used, as determined by the ENGINEER. If the equipment used is of such age that it is not listed, then the most comparable machine shown in the Blue Book, as determined by the ENGINEER, will be used.

C. Standard manufactured items identified by unit weight or section dimensions will be measured utilizing nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

D. "Move-in" and "move-out" charges required by the piece of equipment not available on the job will be included as part of the extra work at actual transportation cost if the particular piece of equipment is not moved onto the specific job under its own power. "Move-in" and "move-out" charges will be paid once each for any particular piece of equipment except in unusual circumstances which must be justified in writing and authorized by the ENGINEER. "Move-in" and "move-out" charges shall include all costs of loading and unloading.

E. Equipment rental rates for standby time, when authorized in writing by the ENGINEER, will be one-half of the computed COA Equipment Rental Rate less the Hourly Operating Cost. Under no circumstances shall it be assumed that idle equipment will be paid for under these standby provisions until after payment for idle equipment is authorized in writing by the ENGINEER.

F. The regional difference percentage as described in Section 1, paragraph 9, of the Blue Book will not be applicable.

G. Overtime as described in Section One of the current Blue Book will not apply. All equipment used on extra work will be paid for at the regular hourly rate as determined by using the formula for City of Albuquerque Equipment Rental Rate.

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

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

11.4.5.6 Losses, damages, and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of and to the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated in paragraph 11.1.6.2.

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

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

11.4.5.9 Cost of premiums for bonds and insurance which OWNER is required to pay in accordance with paragraph 5.3.

11.5 COST OF WORK (EXCLUSION) The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in his principal office or a branch office for general administration of the Work and not specifically included in the schedule referred to in paragraph 4.1--all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

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

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

11.5.4 Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as otherwise provided in paragraph 11.4.5.9).

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

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

11.6 CONTRACTOR'S FEE

The CONTRACTOR's Fee which shall be all owed to CONTRACTOR for his overhead and profit shall be determined as follows:

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

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

11.6.2.1 For costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's Fee shall be ten percent (10%),

11.6.2.2 For costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be ten percent (10%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%), and

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

11.7 OVERHEAD AND PROFIT

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

11.8 ITEMIZED COST

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

11.9 CASH ALLOWANCES

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

11.9.2 Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change

Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as he deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

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

SECTION 12

CHANGE OF THE CONTRACT TIME

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

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

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

SECTION 13

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

13.1: WARRANTY AND GUARANTEE

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

13.1.2 Payment for Defective Work: Whenever CONTRACTOR is required to pay for costs of Defective Work in this Section 13, OWNER shall be entitled to deduct such costs from the Contract Price, including, but not limited to existing retainage held by OWNER in accordance with Section 14 of these General Conditions. In the event the costs of correcting or removing and replacing Defective Work occurs after final acceptance and payment, or should the balance of the Contract Price payable to CONTRACTOR be insufficient to pay OWNER, CONTRACTOR shall pay to OWNER all such costs.

13.2 TESTS AND INSPECTIONS

13.2.1: IN GENERAL

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

13.2.1.2: If the Contract Documents, laws, ordinance, rules, regulations, or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by some public body, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for

approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. All other inspections, tests, and approvals required by the Contract Documents shall be performed by organizations acceptable to OWNER and CONTRACTOR and the costs thereof shall be borne by OWNER unless otherwise specified.

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

13.2.1.4: All inspections, tests or approvals other than those required by Laws or Regulations or any public body having jurisdiction shall be performed by organizations acceptable to OWNER (or by ENGINEER if so specified).

13.2.2 LABORATORY TESTING

13.2.2.1: Job Mix Formulae and Design Mixes: The preparation of job mix formulae and design mixes together with necessary sampling and testing as required for this Contract shall be at CONTRACTOR's expense. Such sampling and testing shall be performed by an approved testing laboratory under the direct supervision of a New Mexico Registered Professional Engineer. Mix design and job mix formulae submittals shall state the methods used in preparing the design or formulae together with substantiating data and graphic representations as appropriate, shall respond to all pertinent material requirements listed in the technical specifications, and shall give recommendations for job procedures and job mix tolerance limits necessary to give reasonable assurance that the specification requirements will be met in the field, when appropriate. Unless specified otherwise in the Technical Specifications, all job mix formulae and design mixes, and material tests relating thereto shall be based upon tests conducted no more than 12 months prior to the date the mix design is submitted.

13.2.2.2: Materials or Manufactured Items: Testing of materials or manufactured items shall be at CONTRACTOR's expense. Tests for materials or manufactured items shall be certified as meeting contract specifications by an approved testing

laboratory under the direct supervision of a professional engineer registered in the state of manufacture or a testing laboratory approved by ENGINEER. Materials or manufactured items that require, as specified herein, either a certificate of compliance or analysis or both, stating that the materials comply in all respects with the requirements of the specifications shall not be installed before the certificates are submitted to the ENGINEER. The certificates shall be signed by a person having legal authority to bind the supplier or manufacturer.

13.2.3 FIELD TESTING

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

13.2.3.2: In the event any Work is covered contrary to the Contract Documents or to the written request of the Engineer, the CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all inspections, tests, or approvals. If any such Work required to be inspected, tested, or approved is covered without written approval of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation; and such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of his intention

to cover such Work and ENGINEER has not acted with reasonable promptness in response to such notice.

13.3 ACCESS TO WORK: ENGINEER and his representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable time for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

13.4 UNCOVERING THE WORK

13.4.1: In the event any Work is covered contrary to the Contract Documents or to the written request of the Engineer, the CONTRACTOR shall bear or pay all direct, indirect, consequential costs of uncovering (when applicable), exposure, observation, inspection, testing and reconstruction, including, but not limited to fees, charges and costs of engineers, architects, attorneys and other professionals. OWNER shall be entitled to a decrease in the Contract Price when such inspection or test occurs prior to final payment and acceptance and CONTRACTOR shall pay OWNER for such cost in the event the inspection or test occurs subsequent to final payment and acceptance of the Work. ENGINEER shall determine the number, type and location of tests. CONTRACTOR shall furnish incidental to this contract, at no extra cost to OWNER, necessary equipment, tools and labor, except testing equipment, to assist the testing agency in the performance of field tests. Copies of all laboratory and field tests shall be forwarded to CONTRACTOR, ENGINEER, and OWNER.

13.4.2: In the event any Work has been covered which Engineer has not specifically requested to observe or the Contract Documents do not specifically require to be observed prior to being covered or if ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the

parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Section 11. If, however, such Work is not found to be Defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Sections 11 and 12.

13.5 OWNER MAY STOP THE WORK

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

13.6 CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by ENGINEER, CONTRACTOR shall promptly, as directed by the ENGINEER, either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Site of the Work and replace it with non-Defective Work. CONTRACTOR shall bear and pay for all direct, indirect, and consequential costs of such correction, removal and replacement, including but not limited to fees, charges and costs of engineers, architects, attorneys, and other professionals incurred by OWNER and made necessary by such correction or removal and replacement. In the event CONTRACTOR fails, for any reason, to correct Defective Work or remove and replace rejected Defective Work within the time specified in ENGINEER's written notice to correct or replace Defective Work, OWNER shall be entitled to have such Defective Work corrected or replaced. CONTRACTOR shall bear and pay for all direct, indirect, and consequential cost of such correction or removal and replacement, including but not limited to fees, charges, and costs of engineers, architects and attorneys, and other professions incurred by OWNER and made necessary by such correction or removal and replacement. OWNER shall be entitled to deduct

such costs from the Contract Price, including but not limited to existing retainage held by OWNER pursuant to Section 14 of these General Conditions. Consequential costs shall include, but are not limited to costs of correcting or removing and replacing all Work of others, or personal or real property of OWNER or others, that may be damaged or destroyed directly or indirectly by CONTRACTOR's Defective Work or by the correction or removal and replacement of the Defective Work.

13.7 ONE YEAR CORRECTION PERIOD

If within one year after the date of Substantial Completion as identified in the letter of acceptance issued by the Owner or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions, either correct such Defective Work, or, if it has been rejected by OWNER, remove it from the Site and replace it with non-Defective Work. OWNER shall give CONTRACTOR written notice of OWNER'S discovery of Defective Work. Such notice shall be postmarked no later than thirty days after the expiration of the one year correction period or such longer correction period as required in the Contract Documents, provided that such notice shall concern only Defective Work identified by OWNER during the applicable correction period. CONTRACTOR shall bear and pay all direct, indirect, and consequential costs of such correction, or removal and replacement as provided in paragraph 13.6, above. If CONTRACTOR does not promptly comply with the terms of such instruction, or, in an emergency where delay would cause serious risk of loss or damage, OWNER may have the Defective Work corrected or the rejected Defective Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR, as provided in paragraph 13.6 above. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents. Consequential costs shall include, but are not limited to costs of correcting or removing and replacing all Work of others, or personal or real property of OWNER or others, that may be damaged or destroyed directly or

indirectly by CONTRACTOR's Defective Work or by the correction or removal and replacement of Defective Work. OWNER's costs of testing or exploratory Work conducted to verify the existence or extent of Defective Work also is a direct cost of correcting or removing and replacing Defective Work for which CONTRACTOR shall pay OWNER.

13.8 ACCEPTANCE OF DEFECTIVE WORK

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

13.9 WORK NEGLECTED BY CONTRACTOR

If CONTRACTOR fails within the time specified in the written notice of ENGINEER to proceed to correct Defective Work or to remove and replace rejected Defective Work as required by ENGINEER in accordance with paragraph 13.6, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this

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

SECTION 14

PAYMENTS TO CONTRACTORS AND COMPLETION

14.1 SCHEDULES

At least ten (10) days prior to the first Application for Payment, CONTRACTOR shall (except as otherwise specified in the Contract Documents), submit to ENGINEER a progress schedule, a final schedule of Shop Drawing submission and where applicable, a schedule of values of the Work. These schedules shall be satisfactory in form and substance to ENGINEER. The schedule of values shall include quantities and unit prices aggregating to the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

14.2 APPLICATION FOR PROGRESS PAYMENT

Payment to CONTRACTOR will be made from OWNER's funds as follows:

14.2.1 Progress payments will be made monthly, commencing with the month next succeeding the month in which OWNER notifies CONTRACTOR in writing to commence work (Notice to Proceed). ENGINEER will make an approximate estimate of the value of the Work done and the value (based on receipted invoices) of unused materials delivered and stored on the site or stored at a location approved by the ENGINEER for the Work during the previous calendar month which estimate shall be incorporated in an Application for Payment. After each such Application for Payment has been approved by OWNER, OWNER will, within twenty (20) days, make payment to CONTRACTOR in the amount of each such Application for Payment, less retainage.

14.2.2 Five percent (5%) of the amount of each Application for Payment, including materials delivered to the job site but not installed, will be retained until Substantial Completion unless good cause exists for a requirement of a different percentage. Upon Substantial Completion, retainage shall be reduced to two percent (2%) of the total contract price unless good cause exists to retain an amount greater or less than two percent (2%). The determination of good cause as specified heretofore shall be recommended by ENGINEER and approved by OWNER. The retainage defined above shall be held by OWNER until completion and acceptance of the Work, as provided herein. If OWNER fails to make a particular progress payment to CONTRACTOR as specified herein, such failure shall

not be held to violate or void this Contract, and no interest or penalty payment shall be owing to CONTRACTOR on such progress payment.

14.3 CONTRACTOR'S WARRANTY OF TITLE

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

14.4 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

14.4.1 The CONTRACTOR and OWNER shall establish at the pre-construction conference the day of each month which shall be the last day the CONTRACTOR is entitled to include Work for the progress payment for the month. ENGINEER's approval of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval) and that CONTRACTOR is entitled to payment of the amount approved. The ENGINEER shall within seven (7) working days from receipt of the Application for Payment (1) approve and send the Application to the OWNER, or (2) disapprove and return the Application to CONTRACTOR, or (3) respond to CONTRACTOR by making inquiries about the Application such as requiring explanation or documentation in support of the Application. However, by approving any such payment, ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been

made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to OWNER free and clear of any liens.

14.4.2 ENGINEER's approval of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.9 have been fulfilled.

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

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

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

14.4.3.3 the Contract Price has been reduced because of Modifications,

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

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

14.4.3.6 of CONTRACTOR's failure to make payment to any subcontractor, or for labor, materials, or equipment.

14.5 SUBSTANTIAL COMPLETION

14.5.1 When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall, in writing to OWNER and ENGINEER, certify that the entire Work is substantially complete and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER or OWNER does not consider the Work substantially complete, ENGINEER

will notify CONTRACTOR in writing giving his reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which he may make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objection, ENGINEER concludes that the Work is not substantially complete, ENGINEER will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing, stating his reasons therefore. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will, within said fourteen (14) days, execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as he believes are justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER prior to his issuing the definitive certificate of Substantial Completion ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

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

14.6 PARTIAL UTILIZATION

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

14.6.1 OWNER may at any time request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of

the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER or OWNER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving his reasons therefore. If ENGINEER considers that part of the Work to be substantially complete, ENGINEER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the Work ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work which shall become binding upon OWNER and CONTRACTOR at the time of issuing the definitive certificate of Substantial Completion as to that part of the Work unless OWNER and CONTRACTOR shall have otherwise agreed in writing and so informed ENGINEER. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

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

14.7 FINAL INSPECTION

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

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

14.8 FINAL APPLICATION FOR PAYMENT

After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after ENGINEER has indicated that the Project is acceptable (subject to the provisions of paragraph 14.11), CONTRACTOR may request final payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as OWNER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Project. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Project for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

14.9 FINAL PAYMENT AND ACCEPTANCE

14.9.1 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the documentation to accompany the final Application for Payment--all as required by the Contract Documents, ENGINEER is satisfied that the Project has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, ENGINEER will, within ten (10) days after receipt of CONTRACTOR's request for final payment, indicate in writing his approval of payment and present the final Application for Payment to OWNER. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14. 11. Otherwise ENGINEER will indicate in writing the reasons for refusing to approve final payment, in which case CONTRACTOR shall make

the necessary corrections. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within thirty (30) days after receipt thereof, pay CONTRACTOR the amount approved by ENGINEER.

14.9.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of the final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1 the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with CONTRACTOR's request for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.10 CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.9, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

14.11 WAIVER OF CLAIMS

The making and acceptance of final payment shall constitute:

14.11.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to paragraph 14.7 or from failure to comply with the Contract Documents or the terms of

any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.11.2 a waiver of all CONTRACTOR against OWNER other previously made in writing unsettled.

14.12 ITEMS FOR PAYMENT

CONTRACTOR will be required to complete the Work specified herein and as shown on the drawings in accordance with the Contract and at the Contract Unit Price established for each of the payment items listed in the Bid Proposal of these Contract Documents. All work which is subsidiary and pertinent to a particular bid item and is not listed as a separate bid item shall be completed as a part of the bid item to which it applies. In case of dispute as to the bid item to which subsidiary or pertinent work applies, ENGINEER's decision shall govern.

SECTION 15

SUSPENSION OF WORK AND TERMINATION

15.1 OWNER MAY SUSPEND WORK

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

15.2 OWNER MAY TERMINATE

15.2.1 The OWNER may terminate this Contract upon the occurrence of any one or more of the following events:

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

15.2.1.2 If CONTRACTOR adjudged bankrupt or insolvent;

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

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

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

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

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

15.2.1.8 If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.1.9 If CONTRACTOR disregards the authority of the Engineer;

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

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

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

15.2.2.1 Where CONTRACTOR'S services have been so terminated by OWNER, said terminations shall not

affect any rights of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by OWNER due CONTRACTOR will not release CONTRACTOR from liability.

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

15.3 CONTRACTOR MAY STOP WORK OR TERMINATE

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty (30) days after it is submitted, or OWNER fails to pay CONTRACTOR any sum approved by ENGINEER within thirty (30) days of its approval and presentation, then CONTRACTOR may, upon seven (7) days' prior written notice to OWNER and ENGINEER, terminate

the Agreement and recover from OWNER payment for all Work satisfactorily completed and expenses actually incurred and overhead and profit thereon. Profit and overhead shall not exceed the percentages established in Section 11 of the General Conditions. Amounts for local and home office overhead shall not be allowed. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may, upon seven (7) days' prior written notice to OWNER and ENGINEER, stop the Work until he has been paid all amounts then due.

15.4 TERMINATION FOR CONVENIENCE

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