

Project Manual

Town of Taos

Mutual Benefits Water Project

Well 10 Pitless Adapter and

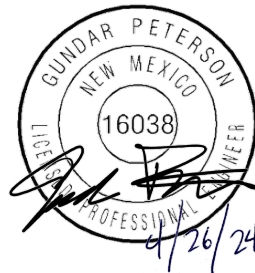
Submersible Pump Installation

Prepared for
Town of Taos, New Mexico

Prepared by



6020 Academy NE, Suite 100
Albuquerque, New Mexico 87109
www.dbstephens.com
DB21.1271



April 26, 2024

Project Manual
Town of Taos Mutual Benefits Water Project
Well 10 Pitless Adapter and Submersible Pump Installation

Table of Contents

Advertisement for Bids

Instructions to Bidders

Bid Bond

Agreement

Attachments and Exhibits

Attachment 1 - Scope of Work and Project Schedule

Exhibit A - Bid Form

Exhibit B - Performance Bond

Exhibit C - Labor and Material Payment Bond

Exhibit D - Supplementary Conditions

Exhibit E - Technical Specifications

Exhibit F - Drawings

Exhibit G - Amendment to the Agreement

Exhibit H - Notice to Proceed

Exhibit I - Certificate of Liability Insurance

Exhibit J - Subcontractor's Listing Form

Exhibit K - Assignment of Antitrust Claims

Exhibit L - Equal Employment Opportunity Compliance

Exhibit M - Change Order

Exhibit N - Application for Payment

Exhibit O - Certificate of Substantial Completion

Exhibit P - Federal Clauses

The Advertisement for Bids is provided as a separate file and can be downloaded at the following URL:
<https://taosnm.cobblestone.software/Gateway/SolicitationPublicSearch.aspx>.

Instructions to Bidders

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

By Order of the Governing Body

Town of Taos

Bailey Andrea

Chief Procurement Officer

INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1— Defined Terms.....	1
Article 2—NOTICE OF SPECIAL CONDITIONS	1
Article 3— Bidding Documents.....	1
Article 4— Qualifications of Bidders.....	2
Article 5— Pre-Bid Conference	3
Article 6— Site and Other Areas; Existing Site Conditions; Examination of Site; Owner’s Safety Program; Other Work at the Site.....	3
Article 7— Bidder’s Representations and Certifications	5
Article 8— Interpretations and Addenda	6
Article 9— Bid Security.	6
Article 10— Contract Times.....	6
Article 11— Substitute and “Or Equal” Items.....	7
Article 12— Subcontractors, Suppliers, and Others	7
Article 13— Preparation of Bid.....	8
Article 14— Basis of Bid	9
Article 15— Submittal of Bid.....	10
Article 16— Modification and Withdrawal of Bid.....	10
Article 17— Opening of Bids.....	10
Article 18— Bids to Remain Subject to Acceptance	10
Article 19— Evaluation of Bids and Award of Contract	11
Article 20— Bonds and Insurance.....	12
Article 21— Signing of Agreement.....	12
Article 22— Sales and Use Taxes	12
Article 23— Contracts to Be Assigned – Not APPLICABLE	12
Article 24— WAGE RATE REQUIREMENTS.....	12
Article 25— SUBCONTRACTORS FAIR PRACTICES ACT.....	13
Article 26— NEW MEXICO STATE PROCUREMENT CODE	13

INSTRUCTIONS TO BIDDERS

ARTICLE 1—DEFINED TERMS.

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

ARTICLE 2— - NOTICE OF SPECIAL CONDITIONS:

- 2.01 Attention of the bidder is particularly called to EXHIBIT P of the General Contract Conditions and other contract documents and specifications which deal with the following:
- A. Federal Labor Standards Provisions, including Davis-Bacon wage rates
 - B. Affirmative Action and Equal Opportunity provisions
 - C. Debarment and suspension
 - D. Lobbying and the Copeland “Anti-Kickback” Act
 - E. Trafficking Victims Protection Act of 2000 (2 CFR §175.15)
 - F. Insurance requirements
 - G. Requirement for a payment bond and performance bond for 100% of contract price
 - H. Requirement that all subcontractors be approved by the Owner
 - I. Time-for-completion and liquidated damages requirements
 - J. Safety standards

ARTICLE 3—BIDDING DOCUMENTS

- 3.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder’s responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 3.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

Bidder may register on the Town of Taos [Vendor Portal](#) as a plan holder and obtain complete sets of Bidding Documents, in the number and format stated in the Advertisement or invitation to bid. Bidders may rely that sets of Bidding Documents obtained from the Town of Taos Procurement Department are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.

3.03 *Electronic Documents*

- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.
 - 1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader Version 2015 or later. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.

ARTICLE 4—QUALIFICATIONS OF BIDDERS

- 4.01 Bidder is to submit the following information with its Bid to demonstrate Bidder's qualifications to perform the Work:
 - A. Required Bid security;
 - B. Complete list of equipment and methods that are proposed for the work;
 - C. List of Proposed Subcontractors;
 - D. List of Proposed Suppliers;
 - E. Driller's and Contractor's license number as evidence of Bidder's State Contractor's License; and
 - F. Required Bidder Experience Form with references;
 - G. Bid Form with required certifications
 - H. Campaign Contribution Disclosure Form
- 4.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

- 4.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

ARTICLE 5—PRE-BID CONFERENCE

An on-site mandatory pre-bid meeting will be held on the time and date indicated in the Advertisement or invitation to bid. Representatives of Owner and Engineer will be present to discuss the Project. Proposals will not be accepted from Bidders who do not attend the conference. A list of qualified Bidders that attended the pre-bid conference will be issued in an Addendum.

- 5.01 Information presented at the pre-Bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-Bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

ARTICLE 6—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

6.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

6.02 *Existing Site Conditions*

A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*

1. The General Conditions in the Agreement identify the following (if any) regarding existing conditions at or adjacent to the Site:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
 - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
 - c. Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely have been identified and established in the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the General Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.06 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

6.03 *Other Site-related Documents*

- A. In addition to the documents regarding existing Site conditions referred to in Paragraph 5.02.A, the following other documents relating to conditions at or adjacent to the Site are known to Owner and can be made available to Bidders for reference on request:
 - 1. *Well Installation Report: Municipal Supply Well 10 Town of Taos, New Mexico, 11-2023*
 - 2. Manufacturer's pitless adapter cut sheet
- B. Owner will make copies of these other Site-related documents available to any Bidder on request.
- C. Owner has not verified the contents of these other Site-related documents, and Bidder may not rely on the accuracy of any data or information in such documents. Bidder is responsible for any interpretation or conclusion Bidder draws from the other Site-related documents.
- D. The other Site-related documents are not part of the Contract Documents.
- E. Bidders are encouraged to review the other Site-related documents, but Bidders will not be held accountable for any data or information in such documents. The requirement to review and take responsibility for documentary Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.
- F. No other Site-related documents are available.

6.04 *Site Visit and Testing by Bidders*

- A. Each bidder may schedule a visit to the Site following the pre-bid conference and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. A mandatory pre-bid conference site visit is scheduled for **Wednesday May 15, 2024 at 10:00 a.m.**
- C. Bidders visiting the Site are required to arrange their own transportation to the Site.
- D. All access to the Site visit must be coordinated through the following Owner or Engineer contact for visiting the Site: Francisco Espinoza (575-751-2047). Bidder must conduct the required Site visit during normal working hours.
- E. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- F. On request, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of

existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.

- G. Bidder must comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- H. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

6.05 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the Agreement.

6.06 *Other Work at the Site*

- A. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 7—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

7.02 The bidder or proposer agrees to comply with the requirements of 2 CFR Pt. 180(C) and 2 CFR Pt. 3000(C) while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.03 By submitting a bid under this solicitation, the successful bidder entering into this Agreement the Contractor certifies that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency from participation in this transaction. This certification is a material representation of fact relied upon by Town. If it is later determined that the Contractor did not comply with 2 CFR Pt. 180(C) and 2 CFR Pt. 3000(C), in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

ARTICLE 8—INTERPRETATIONS AND ADDENDA

- 8.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 8.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer electronically or in writing. Contact information and submittal procedures for such questions are as follows:
- A. Submit all questions to: bandrea@taosnm.gov
- 8.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven days prior to the date for opening of Bids may not be answered.
- 8.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

ARTICLE 9—BID SECURITY.

- 9.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of the Agreement. Such Bid bond will be issued in the form included in the Bidding Documents.
- 9.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 9.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 9.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

ARTICLE 10—CONTRACT TIMES

- 10.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.

- 10.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11—SUBSTITUTE AND “OR EQUAL” ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer within 10 days of the issuance of the Advertisement for Bids or invitation to Bidders. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all registered Bidders. Bidders cannot rely upon approvals made in any other manner.
- 11.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 12—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 If a List of Proposed Subcontractors is identified as a required attachment to the Bid Proposal, the Bidder is required to identify all Subcontractors whose subcontracted work surpasses the Subcontractor listing threshold of five thousand dollars (\$5,000). Firms identified in the List of Proposed Subcontractors shall not be substituted except as permitted under 13-4-36 NMSA 1978 of the Subcontractors’ Fair Practices Act.

If the Bidder fails to specify a Subcontractor in excess of the listing threshold, the Bidder represents that the Bidder, as the prime Contractor, is fully qualified to perform that portion of the Work. For each such listed Subcontractor, the Bidder shall include the following information:

- A. the name of Subcontractor that will perform work or labor or render service on the project identified in the Contract Documents and the city or county of its principal place of business; and
- B. the category of the work that will be done by each Subcontractor; only one Subcontractor may be listed for each category of work as defined by the Bidder.

Contractor shall not substitute any person as Subcontractor in place of those identified on the List or Proposed Subcontractors without prior approval from Owner. (§ 13-4-36 NMSA 1978) The same applies to equipment manufacturers identified on the Equipment Suppliers List, when such a list is included in the Technical Specifications.

A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such

Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

If a List of Proposed Subcontractors is not identified as a required attachment to the Bid, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of the Subcontractors or Suppliers proposed for the following portions of the Work: any Subcontractor performing work in excess of the threshold amount of \$5,000.

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, without an increase in Bid price.

Refer to Article 19 of these Instructions to Bidders for bonding requirements of Subcontractors as per the Subcontractors Fair Practices Act (§ 13-4-37).

If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13—PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

A. All blanks on the Bid Form must be filled in and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein. The subtotal of base bid items, the New Mexico Gross Receipts Tax, and the bid total must be added in words to the bid form where indicated.

B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”

13.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½-inch by 11-inch paper and as closely identical in appearance to the Electronic Document

version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.

- 13.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 13.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.
- 13.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 13.06 A Bid by an individual must show the Bidder's name and official address.
- 13.07 A Bid by a joint venture must be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 13.08 All names must be printed in ink below the signatures.
- 13.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 13.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 13.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.

ARTICLE 14—BASIS OF BID

14.01 *Unit Price*

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 *Allowances*

- A. Cash allowances shall be handled in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15—SUBMITTAL OF BID

- 15.01 The Bidding Documents include one electronic copy of the Bid Form and the Bid Bond Form. The Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.
- 15.02 A Bid must be received no later than the date and time prescribed and by the method indicated in the Advertisement or invitation to bid
- 15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted in the designated manner, will not be accepted and will be returned to the Bidder.

ARTICLE 16—MODIFICATION AND WITHDRAWAL OF BID

- 16.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

ARTICLE 17—OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19—EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 All stipulations and conditions included in the Procurement Code of the State of New Mexico (NMSA 1978 13-1-172 through 13-1-176) regarding procedures related to protests in connection with the solicitation or award of the contract shall apply.
- 19.02 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 19.03 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 19.04 Evaluation of Bids
- A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
 - B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, Owner will announce to all bidders a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening them. For comparison purposes alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which Owner determines funds will be available at the time of award.
 - C. For determination of the apparent low Bidder(s) when sectional bids are submitted, Bids will be compared on the basis of the aggregate of the Bids for separate sections and the Bids for combined sections that result in the lowest total amount for all of the Work.
 - D. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.
- 19.05 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 19.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers, Suppliers, and other individuals or entities must be submitted as provided in the General Conditions of the Agreement.
- 19.07 If the Contract is to be awarded, Owner will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is lowest, price and other factors considered. If detailed in the bid form, factors such as discounts,

transportation costs, and life cycle costs may be used to determine which bidder, if any, is to be offered the award.

ARTICLE 20—BONDS AND INSURANCE

- 20.01 Article 6 of the General Conditions, sets forth Owner’s requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.
- 20.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

ARTICLE 21—SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents, as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 22—SALES AND USE TAXES

Owner is subject to New Mexico Gross Receipts Sales Tax of 7.0%.

ARTICLE 23—CONTRACTS TO BE ASSIGNED – NOT APPLICABLE

ARTICLE 24—WAGE RATE REQUIREMENTS

- 24.01 The prevailing wage rates of the State of New Mexico apply to this contract as do any requirements of the State of New Mexico associated with the use of these State Prevailing wages.
- 24.02 The prevailing wage rates of the United States Department of Labor do apply to this project. The Labor Standards Provisions found at 29 CFR 5.5(a) apply to this project if the prevailing wage rates of the Department of Labor apply. If the contract cost is in excess of \$100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) also apply. Bidder that submits a Bid valued at more than sixty thousand dollars (\$60,000) must be registered with the Labor Enforcement Fund of the New Mexico Department of Workforce Solutions (NMDWS) prior to submittal. The Bidder must enter his New Mexico Department of Workforce Solutions Registration Number on the Bid Form and include a copy of the registration with the Department of Workforce Solutions.
- 24.03 All tiers of Subcontractors shall be subject to this same requirement. The Bidder must also enter the Labor Relations Division, New Mexico Department of Workforce Solutions (NMDWS), Public Works Bureau registration number on the List of Proposed Subcontractors for each

Subcontractor when the value of the subcontracted work will exceed sixty thousand dollars \$60,000, as stated above. Any Subcontractor who lacks current registration, with an “Active” status, with NMDWS as of the date of Bid will be rejected, and the General Contractor will be required to substitute another registered Subcontractor acceptable to the Owner without any increase in Bid price.

ARTICLE 25—SUBCONTRACTORS FAIR PRACTICES ACT

- 25.01 The Subcontractors Fair Practices Act (SCFPA) requires that Payment and Performance Bonds be prepared and presented by the prime Contractor and first-tier Subcontractors only. The Subcontractor’s bonds are to be payable to the prime Contractor, not the Owner.
- 25.02 The Performance and Payment bond provided by an affected Subcontractor should follow current law in the SCFPA (§ 13-4-37 NMSA 1978) that is:
- A. Be issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code;
 - B. Be a surety listed in the US Treasury Circular 570;
 - C. Name the prime Contractor as the obligee.
- 25.03 Pursuant to NMSA 1978, Section 13-1-148.1, a Subcontractor shall provide Performance and Payment Bonds if the Subcontractor’s contract (to the Contractor) for work to be performed is one hundred twenty-five thousand dollars (\$125,000), or more. Failure of a Subcontractor to provide the required bonds shall not subject Owner to any increase in cost due to approved substitution of Subcontractor.
- 25.04 The Performance and Payment Bond required shall be provided to the general Contractor at the time the subcontract is executed. The Performance and Payment Bond is at the expense of the Subcontractor and should clearly state the amount and requirements of the bond. (§ 13-4-37 NMSA 1978)

ARTICLE 26—NEW MEXICO STATE PROCUREMENT CODE

- 26.01 The Contractor is advised that the New Mexico State Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978 imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

BID BOND (PENAL SUM FORM)

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: Town of Taos Address <i>(principal place of business)</i> : 400 Camino de la Placita Taos, NM 87571	Bid Project <i>(name and location)</i> : Well #10 Pitless Adapter and Submersible Pump Installation Taos, NM 87571 Bid Due Date: June 3, 2024 at 3:00 p.m.
Bond Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder _____ <i>(Full formal name of Bidder)</i>	Surety _____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.

11. The term “Bid” as used herein includes a Bid, offer, or proposal as applicable.



TOWN OF TAOS PURCHASING DIVISION

**Changes, additions, deletions and/or any modifications
other than those agreed upon execution of this Contract without the written consent of the Town of Taos
shall render this document null and void**

**AGREEMENT BETWEEN TOWN OF TAOS AND CONTRACTOR FOR MUNICIPAL
SUPPLY WELL PUMP AND PITLESS ADAPTER INSTALLATION SERVICES**

PROJECT: Well 10 (Rio Pueblo)

PROJECT LOCATION: TAOS, NEW MEXICO

TABLE OF CONTENTS

Recitals..... 1

1. Work..... 1

2. The Project..... 2

3. Engineer 2

4. Contract Times..... 2

5. Contract Price 2

6. Payment Procedures 3

7. Contract Documents 3

8. Representations, Certifications, And Stipulations..... 5

General Terms and Conditions of the Agreement Between the Town of Taos and Contractor for
Construction Services 8

Article 1 – Definitions and Terminology..... 8

 1.01. Defined Terms 8

 1.02. Terminology..... 13

Article 2 – Preliminary Matters..... 14

 2.01. Delivery of Performance and Payment Bonds; Evidence of Insurance 14

 2.02. Copies of Documents..... 15

 2.03. Before Starting Construction 15

2.04.	Preconstruction Conference; Designation of Authorized Representatives	15
2.05.	Acceptance of Schedules	15
2.06.	Electronic Transmittals	16
Article 3 – The Contract Documents		16
3.01.	Entire Agreement	16
3.02.	Relationship of Contract Documents	16
3.03.	Conflicting Conditions	16
3.04.	Reference Standards	17
3.05.	Reporting and Resolving Discrepancies	17
3.06.	Requirements of the Contract Documents	18
3.07.	Reuse of Documents	18
Article 4 – Commencement And Progress Of The Work		19
4.01.	Time of Commencement	19
4.02.	Reference Points	19
4.03.	Progress Schedule	19
4.04.	Delays in Contractor’s Progress.....	20
Article 5 – Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions.....		21
5.01.	Availability of Lands	21
5.02.	Use of Site and Other Areas. The Contractor expressly undertakes at its own expense:.	21
5.03.	Limitation on Use of Site and Other Areas.....	22
5.04.	Subsurface and Physical Conditions.....	23
5.05.	Differing Subsurface or Physical Conditions	23
5.06.	Underground Facilities	25
5.07.	Hazardous Environmental Conditions at Site.....	27
Article 6 – Bonds and Insurance		28
6.01.	Performance, Payment, and Other Bonds	28
6.02.	Insurance - General Provisions	29
6.03.	Builder’s Risk and Other Property Insurance	31
6.04.	Property Losses; Subrogation	31
6.05.	Receipt and Application of Property Insurance Proceeds.....	32
Article 7 – Contractor’s Responsibilities.....		32
7.01.	Contractor’s Obligations	32
7.02.	Contractor’s Means and Methods of Construction	32
7.03.	Supervision and Superintendence	33
7.04.	Labor; Working Hours.....	33
7.05.	Services, Materials, and Equipment.....	33
7.06.	“Or Equals”	34
7.07.	Substitutes.....	35
7.08.	Concerning Subcontractors and Suppliers	36

7.09.	Patent Fees and Royalties	38
7.10.	Permits	38
7.11.	Taxes.....	38
7.12.	Compliance with Applicable Law, Choice of Law.....	38
7.13.	Record Documents.....	39
7.14.	Safety and Protection.....	39
7.15.	Hazard Communication Programs.....	40
7.16.	Emergencies.....	41
7.17.	Submittals	41
7.18.	Contractor’s General Warranty and Guarantee.....	43
7.19.	Indemnification.....	45
7.20	Delegation of Professional Design Services.....	46
Article 8 – Other Work at the Site		46
8.01.	Other Work	46
8.02.	Coordination with Utilities	47
8.03.	Legal Relationships.....	48
Article 9 – Town’s Responsibilities.....		49
9.01.	Communications to Contractor	49
9.02.	Replacement of Engineer.....	49
9.03.	Furnish Data.....	49
9.04.	Pay When Due	49
9.05.	Lands and Easements; Reports, Tests, and Drawings.....	49
9.06.	Insurance.....	49
9.07.	Change Orders	49
9.08.	Inspections, Tests, and Approvals	49
9.09.	Limitations on Town’s Responsibilities	49
9.10.	Undisclosed Hazardous Environmental Condition.....	49
9.11.	Evidence of Financial Arrangements.....	50
9.12.	Safety Programs	50
Article 10 – Engineer’s Status During Construction.....		50
10.01.	Town’s Representative	50
10.02.	Visits to Site.....	50
10.03.	Resident Project Representative	50
10.04.	Engineer’s Authority.....	51
10.05.	Determinations for Unit Price Work.....	51
10.06.	Decisions on Requirements of Contract Documents and Acceptability of Work.....	51
10.07.	Limitations on Engineer’s Authority and Responsibilities	52
10.08.	Compliance with Safety Program	52

Article 11 – Changes to the Contract.....	52
11.01. Amending and Supplementing the Contract.....	52
11.02. Change Orders	53
11.03. Work Change Directives.....	53
11.04. Field Orders	53
11.05. Town-Authorized Changes in the Work	54
11.06. Unauthorized Changes in the Work.....	54
11.07. Change of Contract Price	54
11.08. Change of Contract Times	55
11.09. Change Proposals.....	55
11.10. Notification to Surety.....	57
Article 12 – Claims	57
12.01. Claims	57
Article 13 – Cost of the Work; Allowances; Unit Price Work	59
13.01. Cost of the Work.....	59
13.02. Allowances.....	62
13.03. Unit Price Work	62
Article 14 – Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	63
14.01. Access to Work.....	63
14.02. Tests, Inspections, and Approvals	63
14.03. Defective Work.....	64
14.04. Acceptance of Defective Work.....	65
14.05. Uncovering Work	65
14.06. Town May Stop the Work.....	65
14.07. Town May Correct Defective Work	66
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period.....	66
15.01. Progress Payments	66
15.02. Contractor’s Warranty of Title.....	70
15.03. Substantial Completion.....	70
15.04. Liquidated Damages	71
15.05. Partial Use or Occupancy.....	72
15.06. Final Inspection.....	72
15.07. Final Payment	72
15.08. Waiver of Claims (Omitted)	74
15.09. Correction Period.....	74
Article 16 – Suspension of Work and Termination.....	75
16.01. Town May Suspend Work	75
16.02. Town May Terminate for Cause	75
16.03. Town May Terminate for Convenience.....	76

16.04. Contractor May Stop Work or Terminate	76
Article 17 – Final Resolution of Disputes	76
17.01. Methods and Procedures	76
Article 18 – Miscellaneous	77
18.01. Giving Notice.....	77
18.02. Computation of Time.....	78
18.03. Cumulative Remedies	78
18.04. Limitation of Liability	78
18.05. No Waiver.....	78
18.06. Survival of Obligations	78
18.07. Assignment of Contract	78
18.08. Headings	79
18.09. Independent Contractor.....	79
18.10. Appropriations and Authorizations, Bateman Act.....	79
18.11 Interest of Member.....	79
18.12. Other Prohibited Interests	79
18.13. Conflict of Interest of Officers or Employees of the Local Jurisdiction, Members of the Local Governing Body, or Other Public Officials	79
Signature Page	81

LIST OF EXHIBITS

- Exhibit A – Bid Form C-410
- Exhibit B – Performance Bond
- Exhibit C – Labor and Material Payment Bond
- Exhibit D – Supplementary conditions
- Exhibit E – Technical Specifications
- Exhibit F – Drawings
- Exhibit G– Amendment to the Agreement
- Exhibit H – Notice to Proceed
- Exhibit I – Certificate of Liability Insurance
- Exhibit J – Subcontractor's Listing Form
- Exhibit K– Assignment of Antitrust Claims
- Exhibit L – New Mexico, Equal Employment Opportunity Compliance
- Exhibit M – Change Order to Scope of Work

Exhibit N – Application for Payment

Exhibit O – Certificate of Substantial Completion

Exhibit P – Required Federal Clauses

**AGREEMENT BETWEEN TOWN OF TAOS AND CONTRACTOR FOR MUNICIPAL
SUPPLY WELL PUMP AND PITLESS ADAPTER INSTALLATION SERVICES**

PROJECT: Rio Pueblo (Well 10)

PROJECT LOCATION: TAOS, NEW MEXICO

THIS AGREEMENT is made and entered into on this ____ day of _____, 2024 by and between TOWN OF TAOS, a municipal corporation organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the Town"), and _____, a company licensed to do business in the State of New Mexico (hereinafter referred to as "the Contractor") (collectively referred to herein as "the Parties"). Terms used in this Agreement have the meanings stated in the General Conditions. The Town and the Contractor hereby agree as follows:

RECITALS

WHEREAS, the Town of Taos is a party to the 2012 Taos Pueblo Indian Water Rights Settlement (the *Abeyta Settlement*) and has the responsibility for implementing the provisions of the Settlement pertaining to the Town including the drilling of several future water supply wells;

WHEREAS Section 6.2.5 of the Settlement requires the Town to drill and equip its future water supply wells including the Rio Pueblo Well (10), which was drilled in the fall of 2023;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-103 – 13-1-110, competitive sealed Bids were solicited through Invitation for Bids No. _____ for installation of the pump and pitless adapter for Well 10. A Notice or Advertisement for Bids for that for that project was duly published in conformity with NMSA Section 13-1-104;

WHEREAS the CONTRACTOR timely submitted a responsive Bid, and the TOWN thereafter selected the CONTRACTOR as the lowest responsible Bidder pursuant to NMSA Section 13-1-108;

WHEREAS, the Town requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto agree to the Scope of Work and Contract Terms Identified in this Agreement and these General Terms and Conditions.

1. WORK

1.01 The Contractor shall complete all Work as specified or indicated in Contract Documents and Attachment 1 (Scope of Work and Project Schedule). The Work is generally described as follows: installation of a new pitless adapter and submersible well pump in the recently completed Town of Taos supply Well # 10. Installation of the new submersible pump will include disinfection,

installation of the drop pipe, cable, sounding tube and pump to the specified depth, and testing of the pump.

2. THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: installation and testing of a submersible well pump, and installation of a pitless adapter in the Town of Taos Well 10.

3. ENGINEER

3.01 The Project has been designed by Daniel B. Stephens & Associates, Inc. (“the Engineer”) which is to act as the Town’s representative, assume all duties and responsibilities of the Engineer, and have the rights and authority assigned to the Engineer in the Contract.

4. CONTRACT TIMES

4.01 Time is of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Days

A. The Work shall be substantially complete within **60** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.07 of the General Conditions within **90** days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. The Contractor and the Town recognize that time is of the essence as stated in Paragraph 4.01 and 4.02 above and that the Town will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Town and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Town \$1,500.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the Town, the Contractor shall pay the Town \$1,500.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

5. CONTRACT PRICE

5.01 The Town shall pay Contractor, under this contract, a maximum of _____ plus required New Mexico Gross Receipts Taxes, as approved by the Town Council in accordance with NMSA Section 13-1-100. Gross Receipts tax shall be billed at 7.0%. The foregoing amount is not a guarantee but is the maximum amount that the TOWN will pay for work within the scope of work that the CONTRACTOR satisfactorily performs, except that a valid

amendment or change order increasing the amount may be issued by the TOWN. Payment under this Contract is subject to the “Payment Procedures” provisions of Paragraph 6 below and contingent upon the Appropriations and Authorization provisions of Paragraph 18.10.

6. PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. The Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

6.02 Progress Payments

- A. The Town shall make Progress Payments on the basis of the Contractor’s Applications for Payment on or about the **25th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- 1. Prior to Substantial Completion, Progress Payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Town may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. **100** percent of the value of the Work completed.; and

- b. **100** percent of cost of materials and equipment stored and not yet incorporated in the Work

- B. Upon Substantial Completion, the Town shall pay an amount sufficient to increase total payments to the Contractor to **100** percent of the Work completed, less such amounts set off by the Town pursuant to Paragraph 15.01.F of the General Conditions, and less **100** percent of the Engineer’s estimate of the value of Work to be completed or corrected as shown on the Punch List of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, the Town shall pay the remainder of the Contract Price in accordance with Paragraph 15.07 of the General Conditions.

6.04 Consent of Surety

- A. The Town will not make final payment unless the Contractor submits written consent of the surety to such payment, return, or release.

6.05 Interest

- A. All amounts not paid within thirty (30) days following a recommendation to pay of the Engineer shall bear interest at the rate of one and one-half percent (1½ %) per month.

7. CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of all of the following:

1. This Agreement
2. The General Conditions.
3. The Contractor's Bid. Exhibit A - Bid Form C-410
4. Addenda (numbers [number] to [number], inclusive).
5. Bonds:
 - a. Performance Bond (together with power of attorney). Exhibit B
 - b. Payment Bond (together with power of attorney). Exhibit C
6. Supplementary Conditions. Exhibit D
7. Specifications as listed in the table of contents of the Project manual (copy of list attached). Exhibit E
8. Drawings (not attached but incorporated by reference) consisting of **12** sheets with each sheet bearing the following general title: Taos Abeyta Settlement Mutual Benefits Water Project Installation of Municipal Supply Well #10.
9. Drawings listed on the attached sheet index. Exhibit F
10. Attachments and Exhibits to this Agreement (enumerated as follows):
 - a. Attachment 1 - Scope of Work and Project Schedule
 - b. Exhibit A – Bid Form C-410
 - c. Exhibit B – Performance Bond
 - d. Exhibit C – Labor and Material Payment Bond
 - e. Exhibit D – Supplementary conditions
 - f. Exhibit E – Technical Specifications
 - g. Exhibit F – Drawings
 - h. Exhibit G – Amendment to the Agreement
 - i. Exhibit H – Notice to Proceed
 - j. Exhibit I – Certificate of Liability Insurance
 - k. Exhibit J – Subcontractor's Listing Form
 - l. Exhibit K – Assignment of Antitrust Claims
 - m. Exhibit L – Rio Pueblo (Well 10) Drilling and Installation Project, Taos, New Mexico, Equal Employment Opportunity Compliance
 - n. Exhibit M – Change Order to Scope of Work
 - o. Exhibit N – Application for Payment
 - p. Exhibit O – Certificate of Substantial Completion
 - q. Exhibit P – Required Federal Clauses
11. The following items, which may be delivered or issued on or after the Effective Date of the Contract, and are not attached hereto:
 - a. Notice to Proceed.

- b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract documents are to be interpreted in the order listed.
 - C. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
 - D. There are no Contract Documents other than those listed above in this Article 7.
 - E. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

7.02. Entire Agreement.

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

7.03 Amendment to the Agreement

- A. Any amendments to the agreement shall be made on the form listed as Exhibit G.

8. REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 The Contractor's Representations.

- A. In order to induce the Town to enter into this Contract, the Contractor makes the following representations:
 - 1. The Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. The Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. The Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 5. The Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 - 6. The Contractor has considered the information known to the Contractor and has considered the information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract

Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor; and (c) the Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. The Contractor is aware of the general nature of work to be performed by the Town and others at the Site that relates to the Work as indicated in the Contract Documents.
9. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The Contractor's entry into this Agreement constitutes an incontrovertible representation by the Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. The Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of the Town, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive the Town of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Town, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, the Town and the Contractor have signed this Agreement.

This Agreement will be effective on **XXXX** (which is the Effective Date of the Contract).

Town:

Contractor:

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Address:

**FOR SPECIFIC DETAILS, REFER TO ARTICLE
18 of
the GENERAL TERMS AND CONDITIONS OF
AGREEMENT**

Phone: _____

Phone: _____

Email: _____

Email: _____

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

License No.: _____
(where applicable)

State: _____

General Terms and Conditions of the Agreement Between the Town of Taos and Contractor for
**MUNICIPAL SUPPLY WELL PUMP AND PITLESS ADAPTER INSTALLATION
SERVICES**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01. Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term’s singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument described in Section 7.02 of the Agreement, executed by the Town and the Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by the Contractor to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to the Town.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by the Contractor and the Town and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by the Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by the Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*

- a. A demand or assertion by the Town directly to the Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by the Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting the Engineer’s decision regarding a Change Proposal; seeking resolution of a contractual issue that the Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
 - b. A demand or assertion by the Contractor directly to the Town, duly submitted in compliance with the procedural requirements set forth herein, contesting the Engineer’s decision regarding a Change Proposal, or seeking resolution of a contractual issue that the Engineer has declined to address.
 - c. A demand or assertion by the Town or the Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.E.4, concerning disputes arising after the Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written Contract described in Section 7.02 of the Contract between the Town and the Contractor concerning the Work.
13. *Contract Documents*—Those items described in Section 7.01 of the Contract, and which together comprise the Contract.
14. *Contract Price*—The money that the Town has agreed to pay the Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which the Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—Is the person, firm or corporation with whom the Contract is entered into with the Town.
17. *Day*—The word “day” means a calendar day of twenty-four (24) hours measured from midnight to 11:59 p.m. of the next day unless otherwise noted.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective, which is the date of last signature by the parties hereto or the date agreed to between the Parties.
20. *Elected Official*—The Mayor of the Town of Taos and the Town Councilors comprising the Governing Body of the Town of Taos.

21. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
22. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
23. *Engineer*—The individual or entity named as such in the Contract.
24. *Field Order*—A written order issued by the Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
25. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
26. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires the Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice letter by the Town to a Bidder of the Town's acceptance of the Bid.
29. *Notice to Proceed*—The written notice by the Town to the Contractor fixing the date on which the Contract Times will commence to run and on which the Contractor shall start to perform the Work.
30. *Payment Bond*—A written form of security from a surety company to the Town on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the Contract.
31. *Performance Bond*—A written form of security from a surety company to the Town, on behalf of an acceptable prime contractor or subcontractor, engineering the completion of the Work in accordance with the terms of the Contract.

32. *Progress Payment*—A payment from the Town to the Contractor determined by calculating the difference between the completed Work and materials stored and a predetermined Schedule of Values or unit costs (see “Schedule of Values,” “Unit Costs”).
33. *Progress Schedule*—A schedule, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
34. *Project*—The total undertaking to be accomplished for the Town by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
35. *Punch List*—A list of items to be completed or corrected, prepared by the Town and/or the Engineer, checked and augmented as required by the Contractor or Construction Manager. The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all Work in accordance with the Contract Documents.
36. *Resident Project Representative*—The authorized representative of the Engineer assigned to assist the Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by the Contractor, of required submittals and the time requirements for the Engineer’s review of the submittals.
39. *Schedule of Values*—A statement furnished by the Contractor to the Engineer and the Town reflecting the portions of the Contract Price allotted for the various parts of the Work and used as the basis for reviewing the Contractor’s Applications for Payment.
40. *Services*—Includes services performed, workmanship, and material furnished or utilized in the performance of services.
41. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
42. *Site*—Lands or areas indicated in the Contract Documents as being furnished by the Town upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by the Town which are designated for the use of the Contractor.
43. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
44. *Stipulated Sum Bid*—A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.

45. *Stipulated Sum Contract*—A written Contract between the Town and the Contractor wherein the Town agrees to pay the Contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
46. *Subcontractor*—An individual or entity having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work.
47. *Submittal*—A written or graphic document, prepared by or for the Contractor, which the Contract Documents require the Contractor to submit to the Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by the Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Town-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by the Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
48. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.
49. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
50. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or a Subcontractor.
51. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions (if any), with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.04, 5.05, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to the Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

52. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
53. *Unit Price Work*—Work to be paid for on the basis of unit prices.
54. *Unit Prices*—A predetermined price for a measurement or quantity of Work to be performed within a specific contract. The designated Unit Price would include all labor materials, equipment or services associated with the measurement or quantity established.
55. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
56. *Work Change Directive*—A written directive to the Contractor issued on or after the Effective Date of the Contract, signed by the Town and recommended by the Engineer, ordering an addition, deletion, or revision in the Work.
57. *Working Day*—Every day except Saturday, Sunday and holidays recognized by the Town of Taos. Based on a review of weather that may adversely affect the Contractor’s ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Engineer will determine (between the end of the day and noon of the next day) if the Town will charge a Working Day. If the Contractor was able to effectively prosecute for six (6) or more hours on a Saturday, Sunday or Town-recognized Holiday, the Engineer may charge a Working Day.

1.02. Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C and D, are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by the Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of the Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to the Engineer any duty or authority to supervise or direct the performance of the Work other than set forth in the Engineer’s contract with the Town, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to the Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by the Town at Substantial Completion in accordance with Paragraph 15.02 or Paragraph 15.03).
- D. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of the Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then the Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.
- G. *Gender, Singular/Plural*. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- H. *Captions and Section Headings*. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

ARTICLE 2 – PRELIMINARY MATTERS

- 2.01. Delivery of Performance and Payment Bonds; Evidence of Insurance
- A. *Performance and Payment Bonds*: When the Contractor delivers the signed counterparts of the Agreement to the Town, the Contractor shall also deliver to the Town the Performance Bond and Payment Bond (if the Contract requires the Contractor to furnish such bonds).
 - B. *Evidence of Contractor’s Insurance*: When the Contractor delivers the signed counterparts of the Agreement to the Town, the Contractor shall also deliver to the Town, with copies to each

additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by the Contractor in accordance with Article 6.

- C. *Evidence of Town's Insurance:* After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, the Town shall promptly deliver to the Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by the Town under Article 6.

2.02. Copies of Documents

- A. The Town shall furnish to the Contractor one fully executed hard copy of the Contract and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. The Town shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by the Engineer and other design professionals. The Town shall make such original printed record version of the Contract available to the Contractor for review. The Town may delegate the responsibilities under this provision to the Engineer.

2.03. Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), the Contractor shall submit to the Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work, which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for Progress Payments during performance of the Work.

2.04. Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by the Town, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference the Town and the Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05. Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by the Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No Progress Payment will be

made to the Contractor until acceptable schedules are submitted to the Engineer and accepted by the Town.

1. The Progress Schedule will be acceptable to the Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on the Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve the Contractor from the Contractor's full responsibility therefor.
2. The Contractor's Schedule of Submittals will be acceptable to the Engineer if it provides a workable arrangement for reviewing and processing the required Submittals.
3. The Contractor's Schedule of Values will be acceptable to the Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, the Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06. Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Town, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then the Town, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 – THE CONTRACT DOCUMENTS

3.01. Entire Agreement.

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

3.02. Relationship of Contract Documents.

- A. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

3.03. Conflicting Conditions.

- A. Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency. The construction of this Project will be in accordance with Contract

Documents prepared by the Town of Taos except as otherwise specified herein or in the Contract.

- B. The Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- C. Nothing in the Contract Documents creates:
 - 1. Any contractual relationship between the Town or the Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. Any obligation on the part of the Town or the Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.04. Reference Standards

A. Standards Specifications, Codes, Laws and Regulations

- 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of the Town, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for the Engineer. No such provision or instruction shall be effective to assign to the Town or the Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for the Engineer.

3.05. Reporting and Resolving Discrepancies

A. Reporting Discrepancies

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, the Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. The Contractor shall promptly report in writing to the Engineer any conflict, error, ambiguity, or discrepancy that the Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by the Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, the Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then the Contractor shall promptly report it to the Engineer in writing. The Contractor shall not proceed with the

Work affected thereby (except in an emergency as required by Paragraph 7.16) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by the Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for the Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.06. Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, the Contractor and the Town shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. The Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. The Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. The Engineer's written clarification, interpretation, or decision will be final and binding on the Contractor, unless it appeals by submitting a Change Proposal, and on the Town, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then the Engineer will promptly notify the Town and the Contractor in writing that the Engineer is unable to provide a decision or interpretation. If the Town and the Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.07. Reuse of Documents

- A. The Contractor and its Subcontractors and Suppliers shall not:
 1. Have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the Town and the Engineer and specific written verification or adaptation by the Engineer; or

2. Have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without the Town's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein precludes the Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01. Time of Commencement.

- A. The Contract Times will commence to run on the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. The Work as defined in Attachment 1 to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed issued by the Town, attached hereto as Exhibit H.
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Town that the date of beginning and the time for completion of the Work to be done hereunder as specified in the Contract are *essential conditions* of this Contract, and it is further mutually understood and agreed that the Work outlined in this Contract shall be commenced on a date to be specified in the "Notice to Proceed."
- C. The Contractor agrees that Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Town, that the time for the completion of the Work described in this Contract is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

4.02. Reference Points

- A. The Town shall provide engineering surveys to establish reference points for construction which in the Engineer's judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of the Town. The Contractor shall report to the Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.03. Progress Schedule

- A. The Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 1. If an adjustment to the Progress Schedule is required, the Contractor shall submit proposed adjustments to the Engineer for review and acceptance (to the extent indicated in Paragraph 2.05). No such adjustment may result in changing the Contract Time except as provided in 4.03(A)2).
 2. Any proposed adjustment in the Progress Schedule by the Contractor that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

- B. The Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with the Town. No Work will be delayed or postponed pending resolution of any disputes or disagreements or during any appeal process, except as permitted by Paragraph 16.04 or as the Town and the Contractor may otherwise agree in writing.

4.04. Delays in Contractor's Progress

- A. If the Town, the Engineer, or anyone for whom the Town is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then the Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. The Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of the Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of the Contractor.
- C. If the Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of the Town, the Contractor, and those for which they are responsible, then the Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be the Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, pandemics and earthquakes;
 - 2. Delays directly attributable to the Covid-19 pandemic or the effect of Public Health Orders of the State of New Mexico Department of Health and Executive Orders of the Governor of the State of New Mexico;
 - 3. Abnormal weather conditions;
 - 4. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with the Town, as contemplated in Article 8); and
 - 5. Acts of war or terrorism.
- D. The Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
 - 1. The Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the Progress Schedule for completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. The Contractor shall not be entitled to an adjustment in the Contract Price for any delay, disruption, or interference if such delay, disruption, or interference is caused by or within the control of the Contractor. Such a delay, disruption, or interference by the Contractor shall not preclude an adjustment of Contract Times to which the Contractor is otherwise entitled.
 - 3. Adjustments of the Contract Time or the Contract Price are subject to the provisions of Article 11.

- E. The Contractor may request an increase in Contract Times or Contract Price or a Change Proposal using a Change Directive; the Change Directive must include supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
 - 6. The Contractor shall also furnish such additional supporting documentation as the Town or the Engineer may require including, where appropriate, a revised Progress Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01. Availability of Lands

- A. The Town shall furnish the Site. The Town shall notify the Contractor in writing of any encumbrance or restriction specifically related to use of the Site with which the Contractor must comply in performing the Work. The Town shall obtain all lands and rights-of-way or access agreements necessary for the carrying out and completing the Work to be performed under this Contract.
- B. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02. Use of Site and Other Areas. The Contractor expressly undertakes at its own expense:

- A. To take every precaution against injuries to persons or damage to property;
- B. To store apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. To place upon the Work or any part thereof only such loads as are consistent with the safety of the portion of the Work; to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the Site of the Work shall present a neat, orderly and workmanlike appearance;

- D. Before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the Site in a neat, orderly condition;

5.03. Limitation on Use of Site and Other Areas

- A. The Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, to adjacent areas that the Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for the Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas.
- B. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which the Contractor is responsible, the Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 8.03, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) shall indemnify and hold harmless the Town, its Elected Officials, employees, agents, insurers, Engineer, contractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against the Town, the Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, the Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which the Contractor is responsible.
- C. During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- D. Prior to Substantial Completion of the Work the Contractor shall clean the Site and the Work and make it ready for utilization by the Town. At the completion of the Work the Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- E. The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.04. Subsurface and Physical Conditions

- A. *Reports and Drawings*: As identified in the Contract Documents.
- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data*: The Contractor may rely upon the accuracy of the Technical Data identified in the Supplementary Conditions (if any) with respect to reports identified in the Supplementary Conditions and drawings, but such reports and drawings are not Contract Documents.
- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, the Contractor may not rely upon or make any Claim against the Town, its Elected Officials, employees, agents, insurers, or Engineer and its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 - 3. the contents of other Site-related documents made available to the Contractor, such as record drawings from other projects at or adjacent to the Site, or the Town's archival documents concerning the Site; or
 - 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.05. Differing Subsurface or Physical Conditions

- A. *Notice by Contractor*: If the Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
 - 1. is of such a nature as to establish that any Technical Data on which the Contractor is entitled to rely as provided in Paragraph 5.04 is materially inaccurate;
 - 2. is of such a nature as to require a change in the Drawings or Specifications;
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents;

then the Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.16), notify the Town and Engineer in writing about such condition. The Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting the Contractor to do so.

- B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, the Engineer will promptly review the subsurface or physical condition in question; determine

whether it is necessary for the Town to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.05.A; obtain any pertinent cost or schedule information from the Contractor; prepare recommendations to the Town regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise the Town in writing of the Engineer's findings, conclusions, and recommendations.

- C. *Town's Statement to Contractor Regarding Site Condition:* After receipt of the Engineer's written findings, conclusions, and recommendations, the Town shall issue a written statement to the Contractor (with a copy to the Engineer) regarding the subsurface or physical condition in question, addressing the resumption of the Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting the Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time the Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of the Engineer's review or the Town's issuance of its statement to the Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct the Contractor to resume such Work.
- E. Possible Price and Times Adjustments
 - 1. The Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in the Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.05.A;
 - b. With respect to the Work that is paid for on a Unit Price basis, any adjustment in the Contract Price shall be subject to Paragraph 13.03; and,
 - c. The Contractor's entitlement to an adjustment of the Contract Times is subject to Paragraphs 4.04.D and 4.04.E.
 - 2. The Contractor shall not be entitled to any adjustment in the Contract Price or the Contract Times with respect to a subsurface or physical condition if:
 - a. The Contractor knew or should have known of the existence of such condition at the time the Contractor delivered its Bid to the Town or at the time it entered into this Contract;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site; or
 - c. The Contractor failed to give the written notice required by Paragraph 5.05.A.
 - 3. If the Town and the Contractor agree regarding the Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment shall be documented in a Change Order.
 - 4. The Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times no later than thirty

(30) days after the Town's issuance of the Town's written statement to the Contractor regarding the subsurface or physical condition in question.

- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.06 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.07 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.06. Underground Facilities

- A. *Contractor's Responsibilities*: The costs of all of the following are included in the Contract Price, and the Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention and "blue stake" Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including the Town) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor*: If the Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.16), notify the Town and the Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review*: The Engineer shall:
1. promptly review the Underground Facility and determine whether such Underground Facility was shown or indicated on the Drawings, or whether the Underground Facility was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to the Town (and if necessary, issue any preliminary instructions to the Contractor) regarding the Contractor's resumption of the Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from the Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise the Town in writing of the Engineer's findings, conclusions, and recommendations.

5. During such time, the Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Town's Statement to Contractor Regarding Underground Facility:* After receipt of the Engineer's written findings, conclusions, and recommendations, the Town shall issue a written statement to the Contractor (with a copy to the Engineer) regarding the Underground Facility in question. The written statement shall address the resumption of the Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting the Engineer's written findings, conclusions, and recommendations in whole or in part.
 - E. *Early Resumption of Work:* If at any time the Engineer determines that the Work in connection with the Underground Facility may resume prior to completion of the Engineer's review or the Town's issuance of its statement to the Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented and analyzed on a preliminary basis, then the Engineer may in its discretion instruct the Contractor to resume such Work.
 - F. *Possible Price and Times Adjustments*
 1. The Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, and any related delay, disruption, or interference, caused an increase or decrease in the Contractor's cost of, or the time required for, performance of the Work, subject, however, to the following:
 - a. With respect to Work that is paid for on a Unit Price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. The Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.04.D and 4.04.E; and
 - c. The Contractor gave the notice required in Paragraph 5.05.A.
 2. If the Town and the Contractor agree regarding the Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment shall be set forth in a Change Order.
 3. The Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than thirty (30) days after the Town's issuance of the Town's written statement to the Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, the Contractor's remedies are limited to those set forth in this Paragraph 5.05.E.

5.07. Hazardous Environmental Conditions at Site

- A. *Reports and Drawings*: See Supplementary Conditions (if any)
- B. *Reliance by Contractor on Technical Data Authorized*: The Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions (if any) with respect to such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on Technical Data, the Contractor may not rely upon or make any Claim against the Town, and shall indemnify, defend and hold harmless its Elected Officials or Engineer, or any of their officers, directors, members, partners, employees, insurers, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. The Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. The Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If the Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if the Contractor or anyone for whom the Contractor is responsible creates a Hazardous Environmental Condition, then the Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify the Town and the Engineer (and promptly thereafter confirm such notice in writing). The Town shall promptly consult with the Engineer concerning the necessity for the Town to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with the Engineer, the Town shall take such actions as are necessary to permit the Town to timely obtain required permits and provide the Contractor the written notice required by Paragraph 5.07.F. If the Contractor or anyone for whom the Contractor is responsible created the Hazardous Environmental Condition in question, then the Town, at its election, may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. The Contractor shall not resume the Work in connection with such Hazardous Environmental Condition or in any affected area until after the Town has obtained any required permits related thereto, and delivered written notice to the Contractor either (1) specifying that such

- condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If the Town and the Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by the Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then, within 30 days of the Town's written notice regarding the resumption of the Work, the Contractor may submit a Change Proposal, or the Town may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.04.D, 4.04.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, the Contractor does not agree to resume the Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the Town may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. The Town may have such deleted portion of the Work performed by the Town's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify, defend and hold harmless the Town, its Elected Officials, employees, agents and insurers, or Engineer and its officers, directors, members, partners, employees, insurers, agents, consultants, or subcontractors from and against all claims, lawsuits, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by the Contractor or by anyone for whom the Contractor is responsible, or to a Hazardous Environmental Condition created by the Contractor or by anyone for whom the Contractor is responsible. Nothing in this Paragraph 5.07.I obligates the Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01. Performance, Payment, and Other Bonds

- A. *Performance Bond.* The Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for the faithful performance of this Contract. The Performance Bond shall be substantially in the form attached (Exhibit B).
- B. *Payment Bond.* The Contractor shall provide Payment Bond in an amount not less than one hundred percent (100%) of the Contract Price as security for the payment of all persons performing labor on the Project under this Contract, or furnishing materials in connection with this Contract and all of the Contractor's requirements as specified in the Contract Documents. The Payment Bond shall remain in effect until one year after the date when final payment becomes due. The Payment Bond shall be substantially in the form attached (Exhibit C).

- C. The Contractor shall also furnish such other bonds (if any) as are required by any Supplementary Conditions (if any), bidding instructions, or other provisions of the Contract.
- D. All bonds must be substantially in the form included in the Bidding Documents or as otherwise specified by the Town prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- E. The Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in New Mexico or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- F. If the surety on a bond furnished by the Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, the Contractor shall promptly notify the Town and the Engineer in writing and shall, within twenty (20) days after the event giving rise to such notification, provide a replacement bond and surety, both of which must comply with the bond and surety requirements above.
- G. If the Contractor has failed to obtain a required bond, hereunder, the Town may exclude the Contractor from the Site and exercise the Town’s termination rights under Article 16.
- H. Upon request to the Town from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the Town shall provide a copy of the Payment Bond to such person or entity.
- I. Upon request to the Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the Contractor shall provide a copy of the Payment Bond to such person or entity.

6.02 Insurance - General Provisions

- A. The Contractor shall, at its sole cost and expense, procure and maintain at all times during the Term of this Agreement the following policies of insurance:
 - 1. Commercial general liability insurance or public liability insurance coverage, including automobile coverage, insuring against personal injury, bodily injury, sickness or disease, death, and providing broad form property damage coverage insuring against injury to or destruction of tangible personal property wherever located (including loss of use therefrom), premises/operations coverage, underground explosion and collapse coverage, blanket contractual liability (including coverage for the Contractor's contractual indemnity provisions hereunder), products and completed operations coverage, which policy or policies shall insure broadly against claims and liability arising, in any way, from this Contract and the activities of the Contractor hereunder and the use or occupancy of the Premises, with limits not less than \$5,000,000 combined single limits, or a combination of direct coverage and umbrella coverage. The policy shall not contain provisions that result in an erosion of insurance limits by defense costs other than those incorporated into ISO CG 00 01.

2. At all times during the Term of this Contract, the Contractor shall procure and maintain Workers' Compensation Insurance that is fully in accordance with the Laws of the State of New Mexico, and Employer's Liability insurance with a limit not less than \$1,000,000 Bodily Injury Each Accident; \$1,000,000 Bodily Injury by Disease - Each Person; and \$1,000,000 Bodily Injury by Disease - Policy Limit.
- B. All insurance required to be maintained by the Contractor shall be issued by insurance companies authorized to do insurance business in the State of New Mexico and rated not less than A VIII in A.M. Best's Insurance Guide. Self-insurance is not satisfactory to meet the insurance requirements of this Section, nor is an "Occupational Accident and Excess Employer's Indemnity Policy." All policies shall name the Town, its Elected Officials, employees and agents, and insurers as additional insureds utilizing the ISO endorsement form or a certificate acceptable to the Town, and the general liability policy shall contain cross-liability endorsements. Such commercial general liability insurance policies shall insure the performance by the Contractor of the indemnity agreements set forth herein subject to the terms, conditions and exclusions of the policy.
 - C. All such insurance policies shall be written as primary policies, not excess or contributing with or secondary to any other insurance as may be available to the Contractor or to any additional insured except for claims caused by willful misconduct. A certificate of insurance evidencing the insurance required under this Section shall be delivered to the Town not less than ten (10) days following final execution of this Contract (Exhibit I). The Contractor shall furnish the Town with a replacement certificate with respect to any insurance policy not less than thirty (30) days prior to the expiration of any policy.
 - D. The Town may request that the Contractor provide additional documentation to evidence compliance with the insurance requirements of this Section and may request copies of policies, documentation of deductibles, copies of exclusions and endorsements, and evidence of insurance required to be obtained pursuant to this Section. Failure of the Town to demand or inspect such certificates or obtain evidence of the Contractor's compliance with the insurance requirements of this Section shall not be construed as a waiver or release of the Contractor's obligation to obtain and maintain such insurance.
 - E. The Contractor shall have the right to provide the insurance required by this Section with blanket Contract without regard to claims made under such policies with respect to other persons. The Town makes no representation that the insurance coverage specified to be carried by the Contractor pursuant to this Section is adequate to protect the Contractor against liability under this Contract or otherwise; the Contractor shall provide, at its own expense, any additional insurance as Licensee deems adequate or necessary.
 - F. The Contractor shall not do or permit to be done any act or things upon or about the Premises or in connection with the Work under this Contract which results in the assertion of any defense by the insurer to any claim; invalidates, or is in conflict with, the insurance policies of the Town or the Contractor, or which would tend to increase the rates to an amount higher than it otherwise would be; and the Contractor shall neither do and shall not permit to be done any act or thing in connection with the Project or upon the Property which shall or might subject the Town to any liability or responsibility for injury to any person or persons or to property. The Contractor agrees that it will not keep, use, sell or offer for sale in or upon the premises any article which may be prohibited by any insurance policy in force from time to time covering the premises.
 - G. The Contractor shall require each subcontractor to purchase and maintain in force through the duration of the Project workers' compensation insurance in statutory limits, commercial

general liability insurance consistent with that required for the Contractor pursuant to this Agreement, and other insurance that is appropriate for the Project, and shall name the Town, its Elected Officials, employees, agents and insurers, and the Engineer and its officials, employees, agents and insurers, as additional insureds on the subcontractor's commercial general liability policy.

- H. If the Contractor fails to purchase and maintain in force all of the insurance required by this Agreement, the Contractor shall cease work and vacate the Site, and the Town may purchase required insurance and set-off the cost of the insurance against payment and may exercise the Town's termination rights in this Contract.
- I. All insurance policies shall contain a provision or endorsement that the coverage afforded will not be cancelled until at least ten (10) days prior written notice has been given to the Town and other persons additionally insured.

6.03. Builder's Risk and Other Property Insurance

- A. Until the Project is completed and accepted by the Town, the Contractor shall maintain Builder's Risk Insurance (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of the Town, the Contractor, and subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the Project covered by the Contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking. As set forth in 15.03.D, upon Substantial Completion and prior to occupancy of the substantially completed portion of the Project, the Town and Contractor will confer regarding property insurance.
- B. *Property Insurance for Facilities of Town Where Work Will Occur:* The Town shall obtain and maintain in force during the period in which this Contract is in effect property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined.
- C. *Partial Occupancy or Use by Town:* If the Town will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.03, then the Town (directly, if it is the purchaser of the builder's risk policy, or through the Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- D. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item shall be responsible for insuring it. If the Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at the Contractor's expense.

6.04. Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.03, shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against the Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

- B. The Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against the Town, its Elected Officials, employees, agents and insurers, or the Engineer and its officers, directors, members, partners, employees, insurers, agents, consultants, or subcontractors, for all losses and damages caused by, and arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, an installation floater, and any other property insurance applicable to the Work.

6.05. Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 shall be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within fifteen (15) days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other agreement is reached, the Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01. Contractor's Obligations

- A. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and Specifications, and shall do, carry on, and complete the entire Work to the satisfaction of the Engineer and the Town.
- B. The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said Specifications and in accordance with the Drawings covered by this Contract and all supplemental plans in accordance with the directions of the Engineer/Town as given from time to time during the progress of the Work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.

7.02. Contractor's Means and Methods of Construction

- A. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents require, or the Contractor determines, that professional engineering or other design services are needed to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety,

then the Contractor shall cause such services to be provided by a properly licensed design professional, at the Contractor's expense. The Contractor shall notify the Town and Engineer should if such services are required. These services are not Town-delegated professional design services under this Contract and neither the Town nor the Engineer has any responsibility with respect to (1) the Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by the Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.03. Supervision and Superintendence

- A. At the Site of the Work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Engineer/Town and shall be a person who can continue in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.
- B. The Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

7.04. Labor; Working Hours

- A. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Contract. Such personnel (i) shall not be employees of or have any contractual relationships with the Town, and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. The Contractor shall not perform Work on a Saturday, Sunday, or any legal holiday. The Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with the Town's written consent, which will not be unreasonably withheld.

7.05. Services, Materials, and Equipment

- A. It is understood that except unless otherwise specifically stated in the Contract Documents, the Contractor shall provide, assume full responsibility, and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, incidentals and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
- B. No materials or supplies for the Work may be subject to a chattel mortgage or purchased under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.
- C. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All warranties and guarantees required by the Specifications will expressly run to the benefit of the Town. If required by the

Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- D. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- E. All materials and equipment used in the construction of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. If testing not otherwise covered by the Contract is required by the Town or the Engineer, the laboratory or inspection agency shall be selected by the Town or the Engineer. The Town shall pay for the additional laboratory inspection service.
- F. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with Specifications and suitability for uses intended.

7.06. "Or Equals"

- A. Whenever a material, article or piece of equipment is identified on the plans or in the Specifications by reference to manufacturers or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard, not a particular brand; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Engineer/Town, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer/Town 's written approval. The Contractor may request that the Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If the Engineer in its sole discretion determines that an item of equipment or material proposed by the Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, the Engineer may deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment the Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to the Town.
 - b. the Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Town or increase in Contract Times; and
 - 2) the item conforms substantially to the detailed requirements of the item named in the Contract Documents.

- B. *Contractor's Expense:* The Contractor shall provide all data in support of any proposed "or equal" item at the Contractor's sole cost and expense.
- C. *Engineer's Evaluation and Determination:* The Engineer shall be allowed a reasonable time to evaluate each "or-equal" request. The Engineer may require the Contractor to furnish additional data about the proposed "or-equal" item. The Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until the Engineer's review of such substitution. When the Engineer's review is complete and the Engineer has determined that the proposed item is an "or-equal," its approval will be evidenced by an approved Shop Drawing or other written communication. The Engineer will advise the Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in the Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If the Engineer determines that an item of equipment or material proposed by the Contractor does not qualify as an "or-equal" item, the Contractor may request that the Engineer consider the item a proposed substitute pursuant to Paragraph 7.07.

7.07. Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words that state that no substitution is permitted, the Contractor may request that the Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
 - 1. The Contractor shall submit sufficient information as provided below to allow the Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. The Engineer shall not accept requests for review of proposed substitute items of equipment or material from anyone other than the Contractor.
 - 2. The requirements for review by the Engineer will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as the Engineer may decide is appropriate under the circumstances.
 - 3. The Contractor shall make written application to the Engineer for review of a proposed substitute item of equipment or material that the Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

- 2) whether use of the proposed substitute item will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Town for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
- 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* The Engineer shall be allowed a reasonable time to evaluate each substitute request and to obtain comments and direction from the Town. The Engineer may require the Contractor to furnish additional data about the proposed substitute item. The Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until the Engineer's review is complete and the Engineer determines that the proposed item is an acceptable substitute. The Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in the Contract Price or Contract Times. The Engineer will advise the Contractor in writing of any negative determination.
- C. *Special Guarantee:* The Town may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* The Engineer will record the Engineer's costs in evaluating a substitute proposed or submitted by the Contractor. Whether or not the Engineer approves a substitute so proposed or submitted by the Contractor, the Contractor shall reimburse the Town for the reasonable charges of the Engineer for evaluating each such proposed substitute. The Contractor shall also reimburse the Town for the reasonable charges of the Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with the Town) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* The Contractor shall provide all data in support of any proposed substitute at the Contractor's expense.
- F. *Effect of Engineer's Determination:* If the Engineer approves the substitution request, the Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. The Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.
- 7.08. Concerning Subcontractors and Suppliers
- A. The Contractor shall provide to the Town a listing of Subcontractors (Exhibit J), within ten (10) days of the Contract award.

- B. The Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act (NMSA 1978, §§ 13-4-31 to 13-4-42).
- C. The Contractor shall provide to the Town completed an Assignment of Antitrust Claims (Exhibit K) and Certification of Subcontractor Regarding Equal Employment Opportunity form (Exhibit L) for each Subcontractor listed herein.
- D. The Contractor shall be fully responsible to the Town and the Engineer for all acts and omissions of the Contractor's employees; of Suppliers and Subcontractors and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as the Contractor is responsible for the Contractor's own acts and omissions.
- E. The Contractor shall insert provisions in each subcontract that binds the Subcontractor to the terms of the Contract.
- F. Any subcontract shall provide that any remedy or claim for nonpayment of sums due or owing to the Subcontractor or a Supplier for services performed or materials provided is against the Contractor and not the Town, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance and Payment Bond and NMSA 1978, § 13-4-19 (the New Mexico "Little Miller Act").
- G. The Contractor shall restrict Subcontractors and Suppliers from communicating with the Engineer or the Town except through the Contractor, except in an emergency.
- H. The Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve the Contractor from its obligation to the Town to perform and complete the Work in accordance with the Contract Documents.
- I. The Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- J. Prior to entry into any binding subcontract above \$5,000 or one-half of one percent of the architect's or Engineer's estimate of the total Project cost, not including alternates, whichever is greater, the Contractor shall submit to the Town the identity of the proposed Subcontractor or Supplier.
- K. No acceptance by the Town of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of the Town to the completion of the Work in accordance with the Contract Documents.
- L. On a monthly basis, the Contractor shall submit to the Engineer a complete list of all Subcontractors and Suppliers.
- M. The Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- N. The divisions and sections of the Specifications and the identifications of any Drawings do not control the Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- O. The Town may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to the Contractor for Work performed for the Contractor by the Subcontractor or Supplier.

7.09. Patent Fees and Royalties

- A. The Contractor shall indemnify, hold harmless, and save the Town, its Elected officials, employees, agents, insurers, from and against liability or claims of any nature or kind, including the cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Town.
- B. If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the Town of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract Price shall include all reasonable royalties or costs arising from the use of such design, device or materials which is in any way involved in the Work. The Contractor shall indemnify, hold harmless, and save the Town from and against any and all liability or claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with Work agreed to be performed under this Contract.

7.10. Permits

- A. Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the Work. The Town shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. The Town shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.11. Taxes

- A. The Contractor shall comply with federal, state and local tax laws including social security laws and unemployment compensation laws and workers' compensation laws insofar as applicable to the performance of the Contract.

7.12. Compliance with Applicable Law, Choice of Law

- A. *Minimum wage rates.* The Contractor, all Subcontractors and sub-subcontractors warrant and agree to comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act.
- B. *Choice of Law.* This Contract shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the Town agree that the exclusive forum for any litigation arising out of or related to this Contract shall be the Eighth Judicial District Court of New Mexico sitting in Taos, New Mexico.
- C. *New Mexico Procurement Code.* Pursuant to NMSA 1978, §13-1-191, reference is hereby made to the criminal laws of New Mexico, including NMSA 1978 §§ 30-14-1, 30-24-2, and 30-41-1 through 30-42-3, which prohibit bribes, kickbacks, and gratuities, violation of which may constitute a felony. Further, the Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation.
- D. *New Mexico Tort Claims Act.* By entering into this Contract, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978. The Town and its "public employees" as defined in the New Mexico

Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to Law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act.

- E. *Incorporation of Law.* Each and every clause required by Law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
- F. The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.
- G. The Contractor shall give all notices required by Law and this Contract, and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither the Town nor the Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.
- H. If the Contractor performs any work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, the Contractor shall bear all resulting costs and losses, and shall indemnify, defend and hold harmless the Town, its Elected Officials, employees, agents and insurers, Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Work.
- I. The Town or the Contractor may give written notice to the other Party of any changes in Laws or Regulations having an effect on the performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If the Town and the Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or the Contract Times resulting from such changes, then within thirty (30) days of such written notice the Contractor may submit a Change Proposal, or the Town may initiate a Claim.

7.13. Record Documents

- A. The Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications and approved Shop Drawings. The Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, shall be available to the Engineer for reference. Upon completion of the Work, the Contractor shall deliver these record documents to the Engineer.

7.14. Safety and Protection

- A. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of the Work, nor for compliance with applicable safety Laws and Regulations.

- B. The Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.14.C.2 or 7.14.C.3 caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by the Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Town or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. The Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. The Contractor shall notify the Town and the Engineer, the owners of adjacent property, the owners of Underground Facilities and other utilities and other contractors and utility owners performing work at or adjacent to the Site, in writing, when the Work may affect adjoining property.
- G. The Contractor shall inform the Town and the Engineer of the specific requirements of the Contractor's safety program with which the Town's and the Engineer's Elected Officials, employees, agents, insurers, subcontractors and representatives must comply while at the Site.
- H. The Contractor's duties and responsibilities for safety and protection of property shall continue in force until all the Work is completed, the Engineer has issued a written notice to the Town and the Contractor in accordance with Paragraph 15.03.C that the Work is acceptable, and the Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- I. The Contractor's duties and responsibilities for safety and protection will resume whenever the Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.15. Hazard Communication Programs

- A. The Contractor shall be responsible for posting and coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication

information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16. Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor shall first address the emergency and prevent damage, personal injury, death, property damage, or other loss. The Contractor shall, when such can be done consistent with the requirements of the previous sentence, give the Engineer and the Owner prompt written notice of the emergency. If the Contractor believes that any significant changes in the Work or variations from the Contract Documents are necessary as a result of the emergency or as a result of the Contractor's response to an emergency, the Contractor shall notify the Engineer and the Town. If the Engineer determines that a change in the Contract Documents is required because of the emergency or the Contractor's response, a Work Change Directive or Change Order shall be issued.
- B. Where the Contractor has not taken action but has notified the Engineer/Town of an emergency threatening injury to persons or to damage to the Work or any adjoining property, the Contractor shall act as instructed or authorized by the Engineer/Town.

7.17. Submittals

A. Shop Drawing and Sample Requirements

- 1. Before submitting a Shop Drawing or Sample, the Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to the Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that the Contractor has satisfied the Contractor's obligations under the Contract Documents with respect to the Contractor's review of that Submittal, and that the Contractor approves the Submittal.
- 3. With each Shop Drawing or Sample, the Contractor shall give the Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. *Submittal Procedures for Shop Drawings and Samples*: The Contractor shall label and submit Shop Drawings and Samples to the Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. Shop Drawings
 - a. The Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be accurate and complete, and shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Engineer the services, materials, and equipment the Contractor proposes to provide, and to enable the Engineer to review the information for the limited purposes required by Paragraph 7.17.C.
 2. Samples
 - a. The Contractor shall submit the number of the Samples required in the Specifications.
 - b. The Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as the Engineer may require to enable the Engineer to review the Submittal for the limited purposes required by Paragraph 7.17.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. The Engineer shall provide timely review of the Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. The Engineer shall determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents and be compatible with the Work as a functioning whole as indicated by the Contract Documents.
 2. The Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. The Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. The Engineer's review and approval of a Shop Drawing or Sample will not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has complied with the requirements of Paragraph 7.17.A.3 and the Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. The Engineer shall document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
 5. The Engineer's review and approval of a Shop Drawing or Sample shall not relieve the Contractor from responsibility for complying with the requirements of Paragraphs 7.17.A and 7.17.B.
 6. The Engineer's review and approval of a Shop Drawing or Sample or of a variation from the requirements of the Contract Documents will not, under any circumstances, change

the Contract Times or Contract Price unless such changes are included in a Change Order.

7. Neither the Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample shall result in such item becoming a Contract Document.
8. The Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.17.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. The Contractor shall make corrections required by the Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous Submittals.
2. The Contractor shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. The Engineer shall record the Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and the Contractor shall be responsible for the Engineer's charges to the Town for such time. The Town may impose a set-off against payments due the Contractor to secure reimbursement for such charges.

E. Submittals Other than Shop Drawings, Samples, and Town-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Town-delegated designs:
 - a. The Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. The Engineer shall provide timely review of all such Submittals in accordance with the Schedule of Submittals and shall return such Submittals with a notation of either "Accepted" or "Not Accepted." Any such Submittal that is not returned within the time established in the Schedule of Submittals shall be deemed accepted.
 - c. The Engineer's review shall be limited to determining if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, the Contractor shall confer with the Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the Submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

F. *Town-Delegated Designs*: Submittals pursuant to Town-delegated designs are governed by the provisions of Paragraph 7.17.

7.18. Contractor's General Warranty and Guarantee

- A. In addition to any other warranties in this Contract, the Contractor warrants that the Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any Subcontractor or Supplier. The Engineer is entitled to rely on the

Contractor's warranty and the manufacturer's warranty of any equipment of materials furnished in performance of this Contract.

- B. The Contractor's warranty shall continue for a period of one (1) year from the date of final acceptance of the Work under this Contract. Manufacturer's warranties shall continue for the time period identified in the warranty. If the Town takes possession of any part of the Work before final acceptance, the Contractor's warranty shall continue for a period of one (1) year from the date the Town takes possession.
- C. The Town's rights under this warranty are in addition to, and are not limited by, the Town's rights under the correction period provisions of Paragraph 15.10. The time in which the Town may enforce its warranty under this Paragraph 7.18 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.10:
 - 1. The Town shall give the Contractor written notice of any defective Work.; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.E, such that any related Claim must be brought within 30 days of the notice.
- D. The Contractor's warranty hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than the Contractor, the Subcontractors or Suppliers, or any other individual or entity for whom the Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- E. The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of the Work that is not in accordance with the Contract Documents:
 - 1. A release of the Contractor's obligation to perform the Work in accordance with the Contract Documents,
 - 2. A release of the Town's warranty and guarantee rights under this Paragraph 7.18:
 - 3. Observations by the Engineer;
 - 4. Recommendation by the Engineer or payment by the Town of any progress or final payment;
 - 5. The issuance of a certificate of Substantial Completion by the Engineer or any payment related thereto by the Town;
 - 6. Use or occupancy of the Work or any part thereof by the Town;
 - 7. Any review and approval of a Shop Drawing or Sample Submittal;
 - 8. The issuance of a notice of acceptability by the Engineer;
 - 9. The end of the correction period established in Paragraph 15.10;
 - 10. Any inspection, test, or approval by others; or
 - 11. Any correction of defective Work by the Town.
- F. If the Contract requires the Contractor to accept the assignment of a contract entered into by the Town, then the specific warranties, guarantees, and correction obligations contained in the

assigned contract will govern with respect to the Contractor's performance obligations to the Town for the Work described in the assigned contract.

- G. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Town-owned or -controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any defect of equipment, material, workmanship, or design furnished.
- H. The Contractor shall restore any Work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Town shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- I. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or Suppliers for Work performed and materials furnished under this Contract, the Contractor shall obtain all warranties, require all warranties to be executed, in writing and enforce all warranties for the benefit of the Town.
- J. In the event the Contractor's warranty under this clause has expired, the Town may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or Supplier's warranty.

7.19. Indemnification

- A. The Contractor shall indemnify, defend and hold harmless the Town, its Elected Officials, employees, agents, insurers, the Engineer and its officers, directors, members, partners, employees, agents, consultants and subcontractors from losses, claims or expenses (including but not limited to court costs and attorneys' fees), damages, demands, suits, causes of action, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of the Contract and the Work or caused by any negligent act or omission of the Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, including but not limited to the Contractor's breach of any representation or warranty made herein or arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work.
- B. In any and all claims against the Town, its Elected Officials, employees, agents and insurers, the Engineer, its officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The Town shall have the right to control and participate in the defense of any demand, suit, or cause of action concerning matters that relate to the Town and that any such suit shall not be settled without the Town's consent. If a conflict exists between the interests of the Town and

the Contractor in such demand, suit, or cause of action, the Town may retain its own counsel to represent the Town 's interest, at the Contractor's expense.

7.20 Delegation of Professional Design Services

- A. The Town may require the Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that the Contractor must furnish to the Engineer with respect to the Town-delegated design.
- B. The Contractor shall cause such Town-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Town-delegated design is prepared by the Contractor, a Subcontractor, or others for submittal to the Engineer, then such Shop Drawing or other Submittal must bear the written approval of the Contractor's design professional when submitted by the Contractor to the Engineer.
- D. The Town and the Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by the Contractor under a Town-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.20, the Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by the Contractor pursuant to a Town-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.20;
 - 2. Confirming that the Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by the Contractor is consistent with the design concept expressed in the Contract Documents.
- F. The Contractor shall not be responsible for the adequacy of performance or design criteria specified by the Town or the Engineer.
- G. The Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01. Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Town may perform other work at or adjacent to the Site. Such other work may be performed by the Town's employees, or through contracts between the Town and third parties. The Town may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If the Town performs other work at or adjacent to the Site with the Town's employees, or through contracts for such other work, then the Town shall give the Contractor written notice thereof prior to starting any such other work. If the Town has advance information regarding the start of any third-party utility work that the Town has arranged to take place at or adjacent to the Site, the Town shall provide such information to the Contractor.
- C. The Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and the Town, if the Town is performing other work with the Town's own employees, and shall provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. The Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that the Contractor may cut or alter others' work with the written consent of the Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of the Contractor's Work depends upon work performed by others, the Contractor shall inspect such other work and promptly report to the Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Contractor's Work. The Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with the Town, or that is performed without having been arranged by the Town. If such work occurs, then any related delay, disruption, or interference incurred by the Contractor is governed by the provisions of Paragraph 4.04.C.3.

8.02. Coordination with Utilities

- A. If the Town intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with the Town's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be provided to the Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. The Town shall have sole authority and responsibility for such coordination.
- C. The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer/Town immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a Contractor to keep informed of the work progressing on the Site and failure to give notice of

lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

8.03. Legal Relationships

- A. If, in the course of performing other work for the Town at or adjacent to the Site, the Town's employees, any other contractor working for the Town, or any utility owner that the Town has arranged to perform work, causes damage to the Work or to the property of the Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, the Contractor must submit a Change Proposal seeking an adjustment in the Contract Price or the Contract Times under this paragraph within thirty (30) days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such adjustment will take into account information (if any) regarding such other work that was provided to the Contractor in the Contract Documents, and any remedies available to the Contractor under Laws or Regulations. When applicable, any such adjustment in the Contract Price will be conditioned on the Contractor assigning to the Town all of the Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. The Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.04.D and 4.04.E.
- B. The Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of the Town, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If the Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then the Town may impose a set-off against payments due the Contractor and assign to such other contractor or utility owner the Town's contractual rights against the Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When the Town is performing other work at or adjacent to the Site with the Town's employees, the Contractor shall be liable to the Town for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by the Town as a result of the Contractor's failure to take reasonable and customary measures with respect to the Town's other work. In response to such damage, delay, disruption, or interference, the Town may impose a set-off against payments due the Contractor.
- C. If the Contractor damages, delays, disrupts, or interferes with the work of a third-party or a utility owner performing other work at or adjacent to the Site through the Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of the Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against the Contractor, Town, or Engineer, then the Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless the Town, its Elected Officials, employees, agents and insurers or the Engineer, its officers, directors, members, partners, employees, insurers, agents, consultants, or subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – TOWN’S RESPONSIBILITIES

- 9.01. Communications to Contractor
 - A. Except as otherwise provided in these General Conditions, the Town shall communicate to the Contractor solely through the Engineer, except in an emergency as described herein.
- 9.02. Replacement of Engineer
 - A. The Town may at its discretion appoint an engineer to replace the Engineer. The replacement engineer’s status under the Contract Documents will be that of the former Engineer.
- 9.03. Furnish Data
 - A. The Town shall promptly furnish the data required of the Town under the Contract Documents.
- 9.04. Pay When Due
 - A. The Town shall make payments to the Contractor when due as provided in the Contract.
- 9.05. Lands and Easements; Reports, Tests, and Drawings
 - A. The Town’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. The Town’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.02.
 - C. Article 5 refers to the Town’s identifying and making available to the Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06. Insurance
 - A. The Town’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07. Change Orders
 - A. The Town’s responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08. Inspections, Tests, and Approvals
 - A. The Town’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09. Limitations on Town’s Responsibilities
 - A. The Town shall not supervise, direct, or have control or authority over, nor be responsible for, the Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work. The Town shall not be responsible for the Contractor’s failure to perform the Work in accordance with the Contract Documents.
- 9.10. Undisclosed Hazardous Environmental Condition
 - A. The Town’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.07.

9.11. Evidence of Financial Arrangements

- A. Upon request of the Contractor, the Town shall furnish the Contractor reasonable evidence that financial arrangements have been made to satisfy the Town's obligations under the Contract (including obligations under proposed changes in the Work).

9.12. Safety Programs

- A. While at the Site, the Town's employees and representatives shall comply with the specific applicable requirements of the Contractor's safety programs of which the Town has been informed.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01. Town's Representative

- A. The Engineer will be the Town's representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the Town's representative during construction are set forth in the Contract.

10.02. Visits to Site

- A. The Engineer will make visits to the Site at intervals appropriate to the various stages of construction as the Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of the Contractor's executed Work. Based on information obtained during such visits and observations, the Engineer, for the benefit of the Town, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. The Engineer's efforts will be directed toward providing for the Town a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, the Engineer will keep the Town informed of the progress of the Work and will endeavor to guard the Town against defective Work.
- B. The Engineer's visits and observations are subject to all the limitations on the Engineer's authority and responsibility set forth in Paragraph 10.07 and in the Engineer's contract with the Town. Particularly, but without limitation, during or as a result of the Engineer's visits or observations of the Contractor's Work, the Engineer will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03. Resident Project Representative

- A. If the Town and the Engineer have agreed that the Engineer will furnish a Resident Project Representative to represent the Engineer at the Site and assist the Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If the Town designates an individual or entity who is not the Engineer's consultant, agent, or employee to represent the Town at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04. Engineer's Authority

- A. The Engineer shall give all orders and directions contemplated under this Contract and Specifications, relative to the execution of the Work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Engineer estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the Parties hereto relative to said Contract or the Specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for Work under this Contract.
- B. The Engineer has the authority to reject the Work or any portion thereof in accordance with Article 14.
- C. The Engineer's authority as to Submittals is set forth in Paragraph 7.17.
- D. The Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from the Contractor in response to the Town's delegation (if any) to the Contractor of professional design services, is set forth in Paragraph 7.20.
- E. The Engineer's authority as to changes in the Work is set forth in Article 11.
- F. The Engineer's authority as to Applications for Payment is set forth in Article 15.
- G. Neither the Engineer's review of the Contractor's Work for the purposes of recommending payments nor the Engineer's recommendation of any payment, including final payment, will impose responsibility on the Engineer:
 - 1. to supervise, direct, or control the Work;
 - 2. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - 3. for the Contractor's failure to comply with Laws and Regulations applicable to the Contractor's performance of the Work;
 - 4. to make any examination to ascertain how or for what purposes the Contractor has used the money paid by the Town; or
 - 5. to determine that title to any of the Work, materials, or equipment has passed to the Town free and clear of any liens.

10.05. Determinations for Unit Price Work

- A. The Engineer shall determine the actual quantities and classifications of Unit Price Work performed by the Contractor as set forth in Paragraph 13.03.

10.06. Decisions on Requirements of Contract Documents and Acceptability of Work

- A. The Engineer will render decisions regarding the requirements of the Contract Documents and judge the acceptability of the Work pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, the Engineer shall not show partiality to the Town or the Contractor, and shall not be liable to the Town, the Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07. Limitations on Engineer's Authority and Responsibilities

- A. Neither the Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by the Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by the Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by the Engineer to the Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. The Engineer will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work. The Engineer shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. The Engineer shall not be responsible for the acts or omissions of the Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. The Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by the Contractor under Paragraph 15.07.A, shall only be to determine generally that the content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08. Compliance with Safety Program

- A. While at the Site, the Engineer's employees and representatives shall comply with the specific applicable requirements of the Town's and the Contractor's safety programs of which the Engineer has been informed.

ARTICLE 11 – CHANGES TO THE CONTRACT

11.01. Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Change Order (Exhibit M), a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by the Engineer's recommendation. The Town and the Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02. Change Orders

- A. Without invalidating the Contract or the Scope of Work, the Town may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Price being adjusted accordingly, and the consent of the Surety being first obtained where necessary.
- B. The Town and the Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or the Contract Times which are agreed to by the Parties, including any undisputed sum or amount of time for the Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in the Contract Price resulting from a Town set-off, unless the Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by the Town pursuant to Paragraph 11.05, (b) required because of the Town's acceptance of defective Work under Paragraph 14.04 or the Town's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for the Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- C. If the Town or the Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03. Work Change Directives

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the Parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of the Contract Price.
- B. If the Town has issued a Work Change Directive and:
 - 1. If the Contractor reasonably believes that an adjustment in the Contract Times or the Contract Price is necessary, then the Contractor may submit a Change Proposal seeking such an adjustment no later than thirty (30) days after the completion of the Work set out in the Work Change Directive.
 - 2. If the Town reasonably believes that an adjustment in the Contract Times or the Contract Price is necessary, then the Town may submit a Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04. Field Orders

- A. The Engineer may authorize minor changes in the Work so long as the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the

Contract Documents. Such changes shall be accomplished by a Field Order and shall be binding on the Town and also on the Contractor, which shall perform the Work involved promptly.

- B. If the Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, the Contractor may submit a Change Proposal as provided herein.

11.05. Town-Authorized Changes in the Work

- A. Without invalidating the Contract, the Town may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters shall be supported by the Engineer's recommendation.
- B. Such changes in the Work shall be accomplished by a Change Order, if the Town and the Contractor have agreed as to the terms of the Change Order, or by a Work Change Directive. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

11.06. Unauthorized Changes in the Work

- A. The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to Work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.16 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07. Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by Unit Prices contained in the Contract Documents, then by application of such Unit Prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by Unit Prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by Unit Prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. Contractor's Fee: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
 - 1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of cost of the work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of fifteen percent (15%) of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, and (2) with respect to the Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent (5%) of the amount (fee plus the underlying costs incurred); provided, however, that for any such subcontracted Work the maximum total fee to be paid by the Town shall be no greater than twenty-seven percent (27%) of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by the Contractor to the Town for any change which results in a net decrease in the Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to five percent (5%) of such actual net decrease in the Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in the Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08. Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.08. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.04.

11.09. Change Proposals

- A. *Purpose and Content:* The Contractor may submit a Change Proposal to the Engineer to request an adjustment in the Contract Times or the Contract Price; contest an initial decision by the Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the

Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. Change Proposal Procedures

1. *Submittal*: The Contractor shall submit each Change Proposal to the Engineer within thirty (30) days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in the Contract Price or the Contract Time (if any), to the Engineer and the Town within fifteen (15) days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.04.D and 4.04.E.
 - b. Change Proposals related to a change of the Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: The Engineer will advise the Town regarding the Change Proposal, and the Engineer shall consider any comments or response from the Town regarding the Change Proposal. If, in its discretion, the Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then the Engineer may request that the Contractor submit such additional supporting data by a date specified by the Engineer, prior to the Engineer beginning its full review of the Change Proposal.
 4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of the Contractor's supporting data (including any additional data requested by the Engineer), the Engineer shall conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to the Town and the Contractor. If the Engineer does not take action on the Change Proposal within 30 days, then either the Town or the Contractor may at any time thereafter submit a letter to the other Party indicating that as a result of the Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision*: The Engineer's decision is final and binding upon the Town and the Contractor, unless the Town or the Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then the Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and the Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: The Contractor shall not submit any Change Proposals after the Engineer issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10. Notification to Surety

- A. If the provisions of any surety bond require notice to be given of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be the Contractor's responsibility. The amount of each applicable bond shall be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01. Claims

- A. Any Claims, disputes, or other matters in question between the Contractor and the Town shall be addressed as required in this Article.
- B. Acceptance of final payment waives any Claims pursuant to this Article.
- C. A settlement agreement signed by the Town and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- D. Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on with the Work and maintain progress during any dispute resolution proceedings, and the Town shall continue to make payments to the Contractor in accordance with the Contract Documents.
- E. *Disputes Subject to Claims Process:* The following disputes between the Town and the Contractor are subject to the Claims process set forth in this article:
 - 1. Appeals by the Town or the Contractor of the Engineer's decisions regarding the disposition of a Change Proposal;
 - 2. Demands by the Town for an adjustment in the Contract Price or the Contract Times, or other relief under the Contract Documents;
 - 3. Disputes that the Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 - 4. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after the Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.07.B.
- F. *Submittal of Claim:* A Claim must be presented in the form of a written request accompanied by supporting data to the Town or the Engineer for formal decision, with a copy to the other Party.
 - 1. The Party submitting a Claim shall deliver it to the other Party promptly but in no event later than thirty (30) days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within thirty (30) days of the decision under appeal. The Party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by the Contractor seeking an increase in the Contract Times or the Contract Price, the Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of the Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which the Contractor is entitled.

2. The Party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The Parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The Parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other Party, with a copy to the Engineer. If no agreement is reached within fifteen (15) days, the Engineer will render a formal decision to resolve the Claim. Such formal decision of the Engineer shall be binding upon the Contractor and the Town unless either or both notify each other and the Engineer in writing within fifteen (15) days of receipt of the decision that the Party is unwilling to abide by the Engineer's decision and are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by Law and Regulation. If the Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the Town or the Contractor has presented its request, that Party may consider itself aggrieved and may proceed to exercise its rights hereunder.
3. Mediation
 - a. At any time after initiation of a Claim, the Town and the Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim. Either Party may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any Claim before such decision becomes final and binding. The request for mediation shall be submitted in writing to the other Party. Timely submission of the request shall stay the effect of Paragraph 12.1.
 - b. The Contractor shall participate in the mediation process in good faith. The process shall be completed within sixty (60) days of filing of the request. If the Town and the Contractor agree to mediation, then after sixty (60) days from such agreement, the Parties may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation Act.
 - c. The Town and the Contractor shall each pay one-half of the mediator's fees and costs.
4. *Partial Approval*: If the Party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within thirty (30) days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
5. *Denial of Claim*: If efforts to resolve a Claim are not successful, the Party receiving the Claim may deny it by giving written notice of denial to the other Party. If the receiving Party does not take action on the Claim within ninety (90) days, then either Party may at any time thereafter submit a letter to the other Party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within thirty (30) days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
6. *Final and Binding Results*: If the Parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if

a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01. Cost of the Work

- A. The provisions of this Paragraph 13.01 are used when needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, the Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by the Town, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 1. Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the Town and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by the Town.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to the Contractor unless the Town deposits funds with the Contractor with which to make payments, in which case the cash discounts will accrue to the Town. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to the Town, and the Contractor shall make provisions so that they may be obtained.
 3. Payments made by the Contractor to Subcontractors for Work performed by Subcontractors. If required by the Town, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Town and the Contractor and shall deliver such bids to the Town, which will then determine, with the advice of the Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as the Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, 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 the Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. The Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. Construction Equipment Rental
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by the Town as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which the Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by the Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of the 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 include settlements made with the written consent and approval of the Town. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining the Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.

- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that the Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of the Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of the Contractor's principal and branch offices other than the Contractor's office at the Site.
- 4. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.
- 5. Costs due to the negligence of the 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.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. The Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, the Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then the Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, the Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, the Town will be afforded reasonable access, during normal business hours, to all the Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and the Contractor's fee. The Contractor shall preserve all such documents for a period of three years after the final payment by the Town. Pertinent Subcontractors will afford such access to the Town, and preserve such documents, to the same extent required of the Contractor.

13.02. Allowances

- A. It is understood that the Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to the Town and the Engineer.
- B. *Cash Allowances*: The Contractor agrees that:
 - 1. the cash allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. The Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Town's Contingency Allowance*: The Contractor agrees that the Town's contingency allowance, if any, is for the sole use of the Town to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by the Engineer to reflect actual amounts due the Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03. Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the Unit Price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to the Contractor for Unit Price Work will be based on actual quantities.
- C. Each Unit Price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.
- D. The Engineer will determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The Engineer will review with the Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The Engineer's written decision thereon will be final and binding (except as modified by the Engineer to reflect changed factual conditions or more accurate data) upon the Town and the Contractor, and the

final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. Adjustments in Unit Price

1. The Contractor or the Town shall be entitled to an adjustment in the Unit Price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by the Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. The Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in Unit Price will account for and be coordinated with any related changes in quantities of other items of Work, and in the Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to the Town and the Contractor.
3. Adjusted Unit Prices will apply to all units of that item.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01. Access to Work

- A. The Town and the Engineer, independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times. The Contractor shall provide proper and safe conditions for access and inspection of the Site and shall advise persons on Site of the Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02. Tests, Inspections, and Approvals

- A. The Contractor shall give the Engineer timely notice of readiness of the Work (or specific parts thereof) for required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. The Town shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by the Town, except that costs incurred in connection with tests or inspections of the Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations require any Work (or part thereof) specifically to be inspected, tested, or approved, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Engineer the required certificates of inspection or approval.
- D. The Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to the Town;
 2. to obtain acceptance of the Town and the Engineer of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to the Town and the Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by the Contractor without written concurrence of the Engineer, the Contractor shall, if requested by the Engineer, uncover such Work for observation. Such uncovering will be at the Contractor's expense unless the Contractor had given the Engineer timely notice of the Contractor's intention to cover the same and the Engineer had not acted with reasonable promptness in response to such notice.

14.03. Defective Work

- A. Contractor's Obligation: It is the Contractor's obligation to assure that the Work is not defective.
- B. Engineer's Authority: The Engineer has the authority to determine whether the Work is defective and has the authority to reject defective Work.
- C. Notice of Defects: Prompt written notice of all defective Work of which the Town or the Engineer have actual knowledge shall be delivered to the Contractor.
- D. Correction, or Removal and Replacement: Promptly after receipt of written notice of defective Work, the Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if the Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties: When correcting defective Work, the Contractor shall take no action that would void or otherwise impair the Town's warranty or any manufacturer's warranty.
- F. Costs and Damages: In addition to its correction, removal, and replacement obligations with respect to defective Work, the Contractor shall pay all Claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against the Town by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from the defective Work. Prior to final payment, if the Town and the Contractor are unable to agree as to the measure of such Claims, costs, losses, and damages resulting from defective Work, then the Town may impose a reasonable set-off against payments due under Article 15.
- G. If the Contractor fails to promptly perform the Work again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Town may by contract or otherwise, perform the Work and charge to the Contractor any cost incurred by the Town that is directly related to the performance of such service by set off or otherwise, or terminate the Contract for default.

14.04. Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, the Town prefers to accept it, the Town may do so (subject, if such acceptance occurs prior to final payment, to the Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger the safety of any person). The Contractor shall pay all Claims, costs, losses, and damages attributable to the Town's evaluation of and determination to accept such defective Work (such costs to be approved by the Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by the Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the Parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then the Town may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, the Contractor shall pay an appropriate amount to the Town.

14.05. Uncovering Work

- A. The Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to a written request of the Engineer to keep the Work uncovered, then the Contractor shall, if requested by the Engineer, uncover such Work for the Engineer's observation, and then replace the covering, all at the Contractor's expense.
- C. If the Engineer considers it necessary or advisable that covered be observed by the Engineer or inspected or tested by others, then the Contractor, at the Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, the Contractor shall be responsible for all Claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending the Contractor's full discharge of this responsibility the Town shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then the Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06. Town May Stop the Work

- A. If any Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then the Town may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Town to stop the Work will not give rise to any duty on the part of the Town to exercise this right for the benefit of the Contractor, any Subcontractor,

any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07. Town May Correct Defective Work

- A. If the Contractor fails within a reasonable time after written notice from the Engineer to correct defective Work, or to remove and replace defective Work as required by the Engineer, then the Town may, after seven (7) days' written notice to the Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, the Town shall proceed expeditiously. In connection with such corrective or remedial action, the Town may exclude the Contractor from all or part of the Site, take possession of all or part of the Work and suspend the Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which the Town has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Town, the Town's representatives, agents and employees, the Town's other contractors, and the Engineer and the Engineer's consultants access to the Site to enable the Town to exercise the rights and remedies under this paragraph.
- C. All Claims, costs, losses, and damages incurred or sustained by the Town in exercising the rights and remedies under this Paragraph 14.07 shall be charged against the Contractor as set-offs against payments due under Article 15 or independent Claims. Such Claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of the work of others destroyed or damaged by correction, removal, or replacement of the Contractor's defective Work.
- D. The Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by the Town of the Town's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01. Progress Payments.

- A. Based upon an Application for Payment submitted to the Town by the Contractor in which the Contractor certifies for payment, the Town shall make Progress Payments as specified in the Contract on account of the Contract Price to the Contractor for the period ending the last day of the month as follows:
 - 1. The Town, shall make prompt payment no later than thirty (30) Working Days following receipt by the Town of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Price properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Price properly allocable to materials and equipment suitably stored at the Site or some other location agreed upon in writing between the Parties for the period covered by the Application for Payment, less the aggregate of previous payments made by the Town; less such amounts as the Engineer shall determine for all incomplete Work and unsettled Claims as provided in the Contract Documents (see NMSA 1978, § 57-28-5). The Contractors and Subcontractors shall make prompt payment to their Subcontractors and Suppliers for amounts owed for work performed on the construction Project within thirty (30) days after receipt of payment from the Town. If the Contractor or Subcontractor fails to pay its Subcontractor and Suppliers by first-class mail, electronic funds transfer or

hand delivery within thirty (30) days after receipt of an undisputed request for payment, the Contractor or Subcontractor shall pay interest to its Subcontractors and Suppliers beginning on the thirtieth (30th) day after payment was due, computed at one and one-half percent (1½%) of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (NMSA 1978, § 57-28-1 *et seq.*).

2. When making payments, the Town, the Contractor or a Subcontractor shall not retain, withhold, hold back or in any other manner fail to pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to NMSA 1978, § 57-28-5.
 3. In preparing estimates, the material delivered on the Site and preparatory work done may be taken into consideration.
 4. All material and Work covered by partial payments made shall thereupon become the sole property of the Town, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Town to require the fulfillment of all of the terms of the Contract.
 5. The Contractor shall indemnify and hold harmless the Town, its Elected Officials, employees, agents, insurers, and the Engineer from and against all claims growing out of the demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at the Town's request, furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged, or waived. If the Contractor fails to do so, then the Town may, after having served written notice on said Contractor, either pay unpaid bills of which the Town has written notice, direct, withhold and set off from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Town to either the Contractor or its surety. In paying any unpaid obligations of the Contractor, the Town shall be deemed the agent of the Contractor, and any payment so made by the Town shall be considered as a payment made under the Contract by the Town to the Contractor and the Town shall not be liable to the Contractor for any such payments made in good faith.
- B. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for Progress Payments and will be incorporated into Exhibit N (Application for Payment) and Progress Payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress Payments for cost-based Work will be based on Cost of the Work completed by the Contractor at the time of the submission of an Application for Payment.
- C. Applications for Payments
1. At least twenty (20) days before the date established in the Contract for a Progress Payment (but not more often than once a month), the Contractor shall submit to the Engineer a complete Application for Payment covering the Work completed as of the

date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by the Contractor for the materials and equipment; (b) at the Town's request, documentation warranting that the Town has received the materials and equipment free and clear of all liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect the Town's interest therein, all of which must be satisfactory to the Town.
3. Beginning with the second Application for Payment, each Application shall include a certification of the Contractor stating that all previous Progress Payments received by the Contractor have been applied to discharge the Contractor's legitimate obligations associated with prior Applications for Payment.

D. Review of Applications

1. The Engineer will, within ten (10) days after receipt of an Application for Payment, recommend payment, recommend against payment, or recommend modifications to the Application for Payment. If the Engineer recommends that payment not be made, the Engineer shall return the Application for Payment to the Contractor indicating in writing the Engineer's reasons for refusing to recommend payment. The Contractor may make the necessary corrections and resubmit the Application for Payment. The Town's obligation to pay based on the Application for Payment shall not arise until and unless the Engineer recommends payment.
2. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Engineer to the Town, based on the Engineer's observations of the executed Work as an experienced and qualified design professional, and on the Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of the Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point claimed on the Application for Payment;
 - b. the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to the Contractor's being entitled to such payment have been fulfilled.
3. By recommending any such payment, the Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or

- b. there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the Town or entitle the Town to withhold payment to the Contractor.
- 4. The Engineer may refuse to recommend the whole or any part of any payment if, in the Engineer's opinion, it would be incorrect to make the representations to the Town stated in Paragraph 15.01.D.2.
- 5. The Engineer shall recommend reductions in payment (set-offs) necessary in the Engineer's opinion to protect the Town from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. the Town has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. the Town has been required to remove or remediate a Hazardous Environmental Condition for which the Contractor is responsible; or
 - e. the Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by the Contractor and therefore justify termination for cause under the Contract Documents.

E. Payment Becomes Due

- 1. Twenty-one (21) days after presentation of the Application for Payment to the Town with the Engineer's recommendation, the amount recommended (subject to any Town set-offs) will become due, and when due will be paid by the Town to the Contractor.

F. Reductions in Payment by Town

- 1. In addition to any reductions in payment (set-offs) recommended by the Engineer, the Town is entitled to impose a set-off against payment incurred based on any of the following:
 - a. Claims have been made against the Town based on the Contractor's conduct in the performance or furnishing of the Work, or the Town has incurred costs, losses, or damages resulting from the Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. the Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. the Contractor has failed to provide and maintain required bonds or insurance;
 - d. the Town has been required to remove or remediate a Hazardous Environmental Condition for which the Contractor is responsible;
 - e. the Town has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. the Town has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

- h. the Contract Price has been reduced by Change Orders;
 - i. an event has occurred that would constitute a default by the Contractor and therefore justify a termination for cause;
 - j. liquidated or other damages have accrued as a result of the Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. unlawful liens have been filed in connection with the Work; or
 - l. other items entitle the Town to a set-off against the amount recommended.
2. If the Town imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of the Engineer, the Town will give the Contractor immediate written notice (with a copy to the Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay the Contractor any amount remaining after deduction of the amount so withheld. The Town shall promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by the Town and the Contractor, if the Contractor remedies the reasons for such action. The reduction imposed will be binding on the Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that the Town's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.E.1 and subject to interest as provided in the Contract.

15.02. Contractor's Warranty of Title

- A. The Contractor warrants that title to all Work, materials, and equipment furnished under the Contract shall pass to the Town free and clear of Liens and other title defects, and all patent, licensing, copyright, or royalty obligations.
- B. Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Town, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the Work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the Work provided for in this Contract unless a longer period is specified. The Town will give notice of observed defects with reasonable promptness.

15.03. Substantial Completion

- A. When the Contractor considers the entire Work ready for its intended use, the Contractor shall notify the Town and the Engineer in writing that the entire Work is substantially complete and request that the Engineer issue a certificate of Substantial Completion (Exhibit O). The Contractor shall at the same time submit to the Town and the Engineer an initial draft of Punch List items to be completed or corrected before final payment.
- B. Promptly after the Contractor's notification, the Town, the Contractor, and the Engineer shall make an inspection of the Work to determine the status of completion. If the Engineer does not consider the Work substantially complete, the Engineer will notify the Contractor in writing giving the reasons therefor.
- C. If the Engineer considers the Work substantially complete, the Engineer will deliver to the Town a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. The Engineer shall attach to the certificate a Punch List of items to

be completed or corrected before final payment. The Town shall have seven (7) days after receipt of the preliminary certificate during which to make written objection to the Engineer as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, the Engineer concludes that the Work is not substantially complete, the Engineer will, within fourteen (14) days after submission of the preliminary certificate to the Town, notify the Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If the Town does not object to the provisions of the certificate, or if despite consideration of the Town's objections the Engineer concludes that the Work is substantially complete, then the Engineer shall, within said fourteen (14) days, execute and deliver to the Town and the Contractor a final certificate of Substantial Completion (with a revised Punch List of items to be completed or corrected) reflecting such changes from the preliminary certificate as the Engineer believes justified after consideration of any objections from the Town.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, the Town and the Contractor shall confer regarding the Town's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under permanent property insurance held by the Town. Unless the Town and the Contractor agree otherwise in writing, the Town shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon the Town's use or occupancy of the Work.
- E. After Substantial Completion, the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases, the Contractor may submit monthly Applications for Payment for completed Punch List items following the Progress Payment procedures set forth above.
- F. The Town shall have the right to exclude the Contractor from the Site after the date of Substantial Completion subject to allowing the Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04. Liquidated Damages

- A. The Contractor and the Town recognize that time is of the essence as stated in Paragraph 4.01 of the Contract and that the Town will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 of the Agreement above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Town and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Town the sum of \$1500.00 for each day that expires after the time specified in Paragraph 4.02 of the Agreement above for Substantial Completion until such time as the Work is substantially complete. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the Town, the Contractor shall pay the Town the sum of \$1500.00 for each day that expires after the time specified in Paragraph 4.02 of the Agreement above for final completion. The Town may set off liquidated damages from any payment made pursuant to this Contract.

15.05 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work, the Town may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the Town, the Engineer, and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Town for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, subject to the following conditions:
1. At any time, the Town may request in writing that the Contractor permit the Town to use or occupy any such part of the Work that the Town believes to be substantially complete. If and when the Contractor agrees that such part of the Work is substantially complete, the Contractor, the Town, and the Engineer shall follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 2. At any time, the Contractor may notify the Town and the Engineer in writing that the Contractor considers any such part of the Work substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, the Town, the Contractor, and the Engineer shall make an inspection of that part of the Work to determine its status of completion. If the Engineer does not consider that part of the Work to be substantially complete, the Engineer will notify the Town and the Contractor in writing giving the reasons therefor. If the Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.06. Final Inspection

- A. Upon written notice from the Contractor that the Work or an agreed portion thereof is complete, the Engineer will promptly make a final inspection with the Town and the Contractor and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.07. Final Payment

A. Application for Payment

1. After the Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.13), and other documents, the Contractor may make the final Application for Payment on the attached form. (Exhibit N).

2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to the Town free and clear of any title defects, or will so pass upon final payment;
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to the Town) filed in connection with the Work.
 3. In lieu of the releases or waivers and so long as approved by the Town, the Contractor may furnish receipts or releases in full and an affidavit of the Contractor that: (a) the releases and receipts include all labor, services, material, and equipment; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the Town might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, the Contractor may furnish a bond or other collateral satisfactory to the Town, or the Town at its option may issue joint checks payable to the Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of the Engineer's observation of the Work during construction and final inspection, and the Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and that the Contractor's other obligations under the Contract have been fulfilled, the Engineer will, within ten (10) days after receipt of the final Application for Payment, indicate in writing the Engineer's recommendation of final payment and present the final Application for Payment to the Town for payment. Such recommendation will account for any set-offs against payment that are necessary in the Engineer's opinion to protect the Town from loss for the reasons stated above with respect to Progress Payments. Otherwise, the Engineer will return the Application for Payment to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, the Engineer shall also give written notice to the Town and the Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.06.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from the Engineer of the final Application for Payment and accompanying documentation, the Town shall set off against the amount recommended by the Engineer for final payment any further sum to which the Town is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to Progress Payments. The Town shall pay

the resulting balance due to the Contractor within thirty (30) days of the Town's receipt of the final Application for Payment from the Engineer.

15.08. Waiver of Claims (Omitted)

15.09. Correction Period

- A. If within one year after the date of Substantial Completion or the terms of any applicable special guarantee required by the Contract Documents), the Town gives the Contractor written notice that any Work has been found to be defective, or that the Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect the Contractor shall promptly, without cost to the Town and in accordance with the Town's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by the Town, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. The Town shall give any such notice of defect within sixty (60) days of the discovery that such Work or repairs is defective. If such notice is given within such sixty (60) days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.18.C.
- C. If, after receipt of a notice of defect, the Contractor does not promptly comply with the terms of the Town's written instructions, or where an emergency exists where delay would cause serious risk of loss or damage, the Town may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. The Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). The Contractor's failure to pay such costs, losses, and damages within ten (10) days of invoice from the Town shall be deemed the start of an event giving rise to a Claim under Paragraph 12.01.E, such that any related Claim must be brought within thirty (30) days of the failure to pay.
- D. 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 Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. The Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01. Town May Suspend Work

- A. At any time and without cause, the Town may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by written notice to the Contractor and the Engineer. Such notice will fix the date on which Work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than thirty (30) days after the date fixed for resumption of Work.

16.02. Town May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by the Contractor and justify termination for cause:
 - 1. the Contractor's persistent failure 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, or failure to adhere to the Progress Schedule);
 - 2. failure of the Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. the Contractor's disregard of Laws or Regulations; or
 - 4. the Contractor's repeated disregard of the authority of the Town or the Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving the Contractor (and any surety) ten (10) days' written notice of default and termination of the Contract, the Town may proceed to:
 - 1. declare the Contractor to be in default, and give the Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to the Town under any applicable Performance Bond. for breach of contract, for injunctive relief, and as otherwise provided Law.
- C. If the Town has terminated the Contract for cause, the Town may exclude the Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which the Town has paid the Contractor but which are stored elsewhere, and complete the Work as the Town may deem expedient.
- D. The Town may not proceed with termination of the Contract under Paragraph 16.02.B if the Contractor, within seven (7) days of receipt of notice of default and termination, resumes performance of its obligations.
- E. If the Town proceeds as provided in Paragraph 16.02.B, the Contractor shall not be entitled to receive any further payment until the Work is completed.
- F. Where the Contractor's services have been so terminated by the Town, the termination will not affect any rights or remedies of the Town against the Contractor then existing or which may thereafter accrue, or any rights or remedies of the Town against the Contractor or any surety under any Payment Bond or Performance Bond. Any retention or payment of money due the Contractor by the Town will not release the Contractor from liability.

16.03. Town May Terminate for Convenience

- A. Upon seven (7) days' written notice to the Contractor and the Engineer, the Town may, for its own convenience and without cause and without prejudice to any other right or remedy of the Town, terminate the Contract. In such case, the Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. The Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04. Contractor May Stop Work or Terminate

- A. If, through no act or fault of the Contractor, (1) the Work is suspended for more than ninety (90) consecutive days by the Town or under an order of Court or other public authority, or (2) the Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or (3) the Town fails for thirty (30) days to pay the Contractor any sum finally determined to be due, then the Contractor may, upon seven (7) days' written notice to the Town and the Engineer, and provided the Town or the Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from the Town payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if the Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or the Town has failed for thirty (30) days to pay the Contractor any sum finally determined to be due, the Contractor may, seven (7) days after written notice to the Town and the Engineer, stop the Work until payment is made of all such amounts due the Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude the Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to the Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01. Methods and Procedures

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between the Town and the Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

- B. *Final Resolution of Disputes*: If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the Eighth Judicial District Court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the Eighth Judicial District sitting at Taos, New Mexico. The Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E) (3) NMRA 2020.

ARTICLE 18 – MISCELLANEOUS

18.01. Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to the Town, the Engineer, or the Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business. For the Town the address is;

Town of Taos
Public Works Department Attention: Public Works Director
Copy to Town Manager and Town Attorney

Town Manager
400 Camino de la Placita
Taos, NM 87571

Francisco Espinoza
Public Works Director
1030 Dea Lane
Taos, NM 87571

Engineer: Gundar Peterson
Daniel B. Stephens & Associates, Inc.
6020 Academy NE. Ste. 100
Albuquerque, NM 87109

For the Contractor, the address is:

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line delivered to rbellis@taosgov.com, fespinoza@taosgov.com, jsamson@geologic.com
- B. Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either Party may be changed by written notice given by such Party to the other as hereinabove provided.

18.02. Computation of Time

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03. Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by warranty, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04. Limitation of Liability

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither the Town, nor its Elected Officials nor Engineer, nor any of their officers, directors, members, partners, employees, insurers, agents, consultants, or subcontractors, shall be liable to the Contractor for any claims, costs, losses, or damages sustained by the Contractor on or in connection with this Contract.

18.05. No Waiver.

- A. No provision of this Contract shall be deemed to have been waived by either Party unless such waiver be in writing signed by the Party making the waiver and addressed to the other Party; nor shall any custom or practice which may evolve between the Parties in the administration of the terms hereof be construed to waive or lessen the right of either Party to insist upon performance by the other Party in strict accordance with the terms hereof. Further, the waiver by any Party of a breach by the other Party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

18.06. Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations or provisions in the Contract including but not limited to reuse of documents, choice of law and tax liability will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

18.07. Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other Party without the written consent of the Party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract. Any attempted assignment or transfer without the Town 's advance written approval shall be null and void and without any legal effect.

18.08. Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.09. Independent Contractor

- A. The Contractor and the Contractor's agents and employees are independent contractors performing construction services for the Town and are not employees of the Town. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of the Town's vehicles, or any other benefits afforded to employees of the Town as a result of this Contract.

18.10. Appropriations and Authorizations, Bateman Act

- A. *Appropriations and Authorizations.* Consistent with the Bateman Act, this Contract is contingent upon sufficient appropriations and authorizations being made for performance of this Contract by the Governing Body of the Town of Taos and/or, if state or federal funds are involved, the New Mexico State Legislature of the United States. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Contract shall terminate upon written notice by the Town to the Contractor. Such termination shall be without penalty to the Town, and the Town shall have no duty to reimburse the Contractor for expenditures made in the performance of this Contract. The Town is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the Town. The Town's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

18.11 Interest of Member

- A. No member of the Governing Body of the Town of Taos shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

18.12. Other Prohibited Interests

- A. No official of the Town who is authorized in such capacity and on behalf of the Town to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Town who is authorized in such capacity and on behalf of the Town to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

18.13. Conflict of Interest of Officers or Employees of the Local Jurisdiction, Members of the Local Governing Body, or Other Public Officials

- A. The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Contract.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above

TOWN OF TAOS

Contractor

Pascualito Maestes, Mayor

Printed name

Date

Date

Attest:

Francella Garcia, Town Clerk

Lupe Martinez, Finance Director

Budget Line Item:

Date

Administrative approval:

Andrew Gonzales, Town Manager

Date

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above

CONTRACTOR

Signature

By: _____
Print Name and Title

Attest (Secretary)

Date

THE TOWN OF TAOS

By: _____
Pascualito Maestes, Mayor

Date: _____

Attest: Francella Garcia, City Clerk

Lupe Martinez, Finance Director

Approved as to form:

Attorney for the Town of Taos

Budget Line Item:

Administrative approval:

Andrew Gonzales, Town Manager

ATTACHMENT 1

SCOPE OF WORK AND PROJECT SCHEDULE

PROJECT NAME:

**SUBMERSIBLE PUMP AND PITLESS ADAPTER INSTALLATION
WELL 10 (RIO PUEBLO)**

1. SCOPE OF WORK

The project includes:

Installation of a submersible pump and pitless adapter for municipal supply Well 10 (Rio Pueblo).

The site shall be restored once the work is complete.

The selected Contractor shall furnish the labor, materials, supplies, and equipment required to complete the project. To be considered for this work, bidders must have current New Mexico Well Driller and Business licenses, and must also have the appropriate General Contractor license required by the State.

2. PROJECT SCHEDULE:

To be completed by the Contractor within 10 days of the effective date of the Contract.

EXHIBIT A – BID FORM C-410

EXHIBIT B – PERFORMANCE BOND

A. WHEREAS, _____ as PRINCIPAL (hereinafter called "the CONTRACTOR"), and _____, as SURETY (hereinafter called "the SURETY"), are held and firmly bound unto OBLIGEE Town of Taos, a Political Subdivision of the State of New Mexico, (hereinafter called "the TOWN "), in the sum of _____ dollars (\$0,000.00), for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS the CONTRACTOR has a written contract dated _____, 2024 with the TOWN for Well Pump and Pitless Adapter Installation Contract #, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to "the Contract."

C. NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the TOWN shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the TOWN.
2. Whenever CONTRACTOR shall be, and is declared by the TOWN to be in default under the Contract, the TOWN having performed the TOWN's obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - a. Complete the Contract in accordance with its terms and conditions, or
 - b. Obtain a bid or bids for submission to the TOWN for completing the Contract in accordance with its terms and conditions, and upon determination by the TOWN and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Town of Taos, and make available as work

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

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Town of Taos named herein or the heirs, executors, administrators, or successors of Town of Taos.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS ____ DAY OF _____, 2024.
(seal)

CONTRACTOR - PRINCIPAL

By: _____

State of New Mexico)

County of Taos)

This instrument was acknowledged before me this ____ day of _____, 2024, by

NOTARY PUBLIC

My commission expires:

EXHIBIT C – LABOR AND MATERIAL PAYMENT BOND

(SAMPLE)

WHEREAS, _____, as Principal (hereinafter called "the PRINCIPAL"), and _____, as SURETY (hereinafter referred to as "the SURETY"), are held and firmly bound unto the Town of Taos, a municipal corporation organized and existing under the Laws of the State of New Mexico, as OBLIGEE (hereinafter called "the "TOWN"), for the use and benefit of any claimants as herein below defined as Principal (hereinafter caller the PRINCIPAL) and as SURETY (hereinafter called the "SURETY"), are, in the amount of _____ dollars (\$000.00) for the payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2024, with the TOWN for well drilling and construction contract # _____ services in the Town of Taos, New Mexico, which must be constructed in accordance with drawings and specifications which contract is referenced and made a part hereof, and is hereinafter referred to as "the Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include but not be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or rental of equipment directly applicable to the Contract.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the TOWN that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The TOWN shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL, shall have written notice in the form of a sworn statement to or from the TOWN and any one or both of the following—the PRINCIPAL or

SURETY above named—within ninety(90) days after such said claim is made or suit filed, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.

b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the TOWN, PRINCIPAL or SURETY, at any place where an office is regularly maintained by said TOWN, PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitations under NMSA 1978, Section 37-1-3.

5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Town of Taos named herein.

SIGNED AND SEALED THIS ____ DAY OF _____, 2024.

CONTRACTOR - PRINCIPAL

By: _____

State of New Mexico)
) ss
County of Taos)

This instrument was acknowledged before me this ___ day of _____, 2024, by

NOTARY PUBLIC

My commission expires: _____

SURETY

By: _____

Printed Name: _____

Title: _____

State of New Mexico)
) ss
County of Taos)

This instrument was acknowledged before me this ___ day of _____, 2024, by

NOTARY PUBLIC

My commission expires:

SURETY'S Authorized New Mexico Agent

(seal)

EXHIBIT D – SUPPLEMENTARY CONDITIONS

None

EXHIBIT E – TECHNICAL SPECIFICATIONS

EXHIBIT F – DRAWINGS

Provided as separate file.

EXHIBIT G – AMENDMENT TO THE AGREEMENT

**TOWN OF TAOS
AMENDMENT NO. ___ TO THE AGREEMENT WITH _____ TO
PROVIDE SUBMERSIBLE PUMP AND PITLESS ADAPTER
INSTALLATION SERVICES FOR MUNICIPAL WELL #10**

THIS AMENDMENT is made and entered into this ___ day of ___ 2024, by and between the **Town of Taos**, a municipal corporation organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the Town"), and _____ (hereinafter referred to as "the Contractor").

WHEREAS, pursuant to NMSA 1978, Sections 13-1-103 – 13-1-110, competitive sealed bids were solicited through Invitation for Bids No. _____ for well drilling services and a Notice or Advertisement for Bids for that project was duly published in conformity with NMSA Section 13-1-104;

WHEREAS, on [DATE], the Town and the Contractor entered into Agreement No. _____ (the "Agreement") that provides for the Contractor's provision of these services; and

WHEREAS, pursuant to Part 8, Article 12, (NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED) must be in writing and signed by both parties; and

NOW THEREFORE, BOTH PARTIES AGREE AS FOLLOWS.

1. The Town and the Contractor hereby agree to modify Article _____ of the Agreement, as follows:

[DETAIL CHANGES HERE]

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. _____ to the Agreement as of the date first written above.

TOWN OF TAOS

THE CONTRACTOR

Andrew Gonzales, Town Manager

By: _____

Date: _____

Date: _____

Approved as to form:

Christopher Stachura, Town Attorney

Lupe Martinez, Finance Director

EXHIBIT H – NOTICE TO PROCEED

TO: _____ DATE: _____
PROJECT: _____

ATTN: _____ PROJECT NO: _____
CONTRACT NO: _____
RFP NO: _____

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as your NOTICE TO PROCEED on the above-referenced project. The Contract Time will commence to run on the date of this document.

Your firm shall commence work within ten (10) calendar days of the above date and shall achieve Substantial Completion no later than ____ calendar days following the date of this Notice, which shall be _____ 2024, unless modified by a change order.

It is essential that you make reference to the above-stated project number on all documents sent to the Town, Architect or Engineer. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Town, Architect or Engineer for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER:

THE TOWN OF TAOS

By: _____
Andrew Gonzales, Town Manager

CONTRACTOR:

By: _____

EXHIBIT I – CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT J – SUBCONTRACTOR'S LISTING FORM

1. To be fully executed and included with Bid as a condition of the Bid (NMSA 1978, Sections 13-4-31 through 13-4-42).

2. General Contractor Bidders shall list all proposed subcontractors over the listing threshold of \$5,000 or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. (NMSA 1978, §13-4-34). Contractors submitting bid pricing for more than \$60,000 shall be registered with the New Mexico Department of Workforce Solutions prior to submitting a bid to the Town of Taos (NMSA 1978, §13-4-13.1). If a Contractor is not registered at the time of Bid opening, their Bid shall be considered non-responsive and will be rejected. Contractor's subcontractors shall also be registered. If a Contractor's Bid includes any subcontractor that is not registered, their Bid may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with NMSA 1978, §13-4-36. Bidders may find additional information on the registration requirements and forms at the following website: <http://www.dws.state.nm.us/pwaa>

3. The Bidder shall list the Subcontractor's Name, the City or Town of the Place of Business and the Category of Work that will be done by each Subcontractor. The contractor will be required to provide signatures for all subcontractors listed on this subcontractor listing form.

4. For *all trades* that are listed "**only one bid received**" or "**no bid received**," the Contractor must list the names and telephone numbers of all businesses contacted for a quote.

Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		

Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		
Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		
Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.

Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		
Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
.		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		
Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted:		
1.		
2.		
3.		

Trade:	Name of Subcontractor:	
Dollar amount of bid:		
Address:		
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.
Signature of Subcontractor (To be obtained after award of contract):		
If "no bid received" or "only one bid received" list name and telephone number of businesses contacted: 1. 2. 3.		

EXHIBIT K- ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS,
SUPPLIERS, AND SUBSUBCONTRACTORS OF CONTRACTORS ON TOWN
CONTRACTS.

FIRM NAME:

ADDRESS:

PHONE NO.:

PROJECT:

PROJECT NO:

_____ agrees that any and all claims which it may have or may inure to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with work under this Agreement are hereby assigned to Town of Taos, but only to the extent that such overcharges are passed on to the Town. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Town, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers, Subcontractors or
Sub-subcontractors

TITLE: _____

EXHIBIT L WELL 10 (RIO PUEBLO) DRILLING AND INSTALLATION
PROJECT
TAOS, NEW MEXICO
EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Company:

Address:

Date:

_____ strives and pledges to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity.

In accordance with all such laws of the State of New Mexico, _____, assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination.

Acknowledged and accepted by:

Name

Title

Company

EXHIBIT M – CHANGE ORDER TO SCOPE OF WORK

NO.: [NUMBER OF CHANGE ORDER]

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ _____	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ _____	[Increase] [Decrease] this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

Recommended by Engineer (if
required)

By: _____
Title: _____
Date: _____

Accepted by Contractor

Authorized by Owner

By: _____
Title: _____
Date: _____

Approved as to form

Lupe Martinez, Finance Director

REVIEWED

TOWN OF TAOS
PROJECTMANAGER

By: _____

Date: _____

Lupe Martinez, Finance Director

Approved as to form:

Christopher Stachura, Attorney for
The Town of Taos

EXHIBIT O – CERTIFICATE OF SUBSTANTIAL COMPLETION
TOWN OF TAOS _____ (DEPARTMENT)

CONTRACTOR:

Contractor Purchase Order Number: _____

ENGINEER (if applicable): _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Town of Taos and Contractor
(include address and project location description):

(provide)

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the Town to make use of the Work as intended.

By its signature below the Contractor further requests Architect or Engineer (if applicable) and the Town to inspect the Work and to concur in the Work's substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within _____ days from date of receipt from the Town, Architect or Engineer.

Contractor

By: _____
Name:

Date: _____

Accepted, Town of Taos:

By: _____

Name: _____

Date: _____

Inspected/Concurrence Architect/Engineer

Print Name: _____

Signature: _____

Date: _____

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Engineer and Town is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____.

The punch list consists of _____ (indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Town of Taos who has hereby established the Date of Substantial Completion as _____ (date), which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the _____ (Town designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the Town may occupy the Work, or distributed portion thereof, for the use for which it is intended.

The Town accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

Punch List Items: (Use additional sheets if necessary)

EXHIBIT P- REQUIRED FEDERAL CLAUSES (2 CFR PT. 200 APP. II)

1. FEDERAL CONTRACT PROCEDURES (2 CFR PT. 200 APP. II(A))

- a. All requirements listed in 2 CFR Part 200, Appendix II shall apply to this Agreement.

2. TERMINATION (2 CFR PT. 200, APP. II (B))

a. Termination for Cause

- i. Any violation or breach of terms of this Agreement on the part of the Contractor or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this agreement.
- ii. The Town of Taos (Town) will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. The Town reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Town elects to terminate the contract. The Town's notice will identify a specific date by which the Contractor must correct the breach. The Town may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Town's notice.
- iii. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

b. Termination for Convenience

- i. The Town may, by written notice to the Contractor, terminate this Agreement for its convenience and without cause or default on the part of Contractor. Upon receipt of the notice of termination, except as explicitly directed by the Town in writing, the Contractor must immediately discontinue all services affected.
- ii. Upon termination of the Agreement, the Contractor must deliver to the Town all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Contractor under this Agreement, whether complete or partially complete.
- iii. The Town agrees to make just and equitable compensation to the Contractor for satisfactory work completed up through the date the Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services.
- iv. The Town further agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

3. EQUAL EMPLOYMENT OPPORTUNITY (2 CFR PT. 200, APP. II (C))

- a. The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.
- b. This provision binds Contractor from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
- c. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the equal opportunity clause provided by 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246 as amended by Executive Order 11375 (32 F.R. 14303) which are hereby incorporated by reference pursuant to 41 C.F.R. § 60-1.4(d) and made a part of this Agreement.
- d. The Contractor must comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- e. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- f. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- g. The Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or

indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- h. In all solicitations, either by competitive bidding, or negotiation made by the Contractor of work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- i. The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Town or the Bureau of Reclamation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Town or the Bureau of Reclamation, as appropriate, and will set forth what efforts it has made to obtain the information.
- j. In the event of a Contractor's noncompliance with the non-discrimination provisions of this Agreement, the Town will impose such contract sanctions as it or the Bureau of Reclamation may determine to be appropriate, including, but not limited to:
 - i. Withholding payments to the Contractor under the contract until the Contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
- k. The Contractor will include the provisions of paragraphs (a) through (j) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Town or the Bureau of Reclamation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Contractor may request the Town to enter into any litigation to protect the interests of the Town. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. DAVIS BACON ACT, AS AMENDED (40 U.S.C. 3141-3148). (2 CFR PT. 200, APP. II 200 (D))

- a. The Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148), as supplemented by Department of Labor regulations, 29 C.F.R. Pt. 5.
 - i. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - ii. Additionally, Contractors are required to pay wages not less than once a week.
- b. The Contractor must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by the Department of Labor Regulations, 29 C.F.R. Pt. 3.
 - i. The Contractor, and each subrecipient, is prohibited from inducing, by any means, any person employed in the course of this Agreement to give upon any party of the compensation to which he or she is otherwise entitled.
 - ii. Breach of the Copeland “Anti-Kickback” Act provisions as set forth above may be grounds for termination of the Agreement, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- c. Federal Fair Labor Standards Act (Minimum Wage) (Reference: 29 USC § 201, *et seq.*). All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- d. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor-Wage and Hour Division.

5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708) (2 CRF PT. 200, APP. II(E))

- a. The Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations, 29 CFR Pt. 5.
- b. The Contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. ENVIRONMENTAL PROTECTION (2 CFR PT. 200 (G))

- a. Clean Air Act
 - i. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - ii. The Contractor agrees to report each violation to Town and understands and agrees that the Town will, in turn, report each violation to the appropriate Environmental Protection Agency Regional Office.
 - iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 issued under this Agreement.
- b. Federal Water Pollution Control Act
 - i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.
 - ii. The Contractor agrees to report each violation to Town and understands and agrees that the Town will, in turn, report each violation to the appropriate Environmental Protection Agency Regional Office.
 - iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 issued under this Agreement.

7. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12546 AND 12689) (2 CFR PT. 200 APP. II (H))

- a. The Department of the Interior regulations governing government-wide debarment and suspension (nonprocurement), adopt the common rule for the government-wide system of debarment and suspension for non-procurement activities, and are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Town of Taos agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.
- b. This Agreement is a covered transaction for purposes of 2 CFR Pt. 180 and 2 CFR Pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
- c. The Contractor must comply with 2 CFR Pt. 180(C) and 2 CFR Pt. 3000(C), and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- d. By submitting a bid under this solicitation, the successful bidder entering into this Agreement, the Contractor certifies that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency from participation in this transaction. This certification is a material representation of fact relied upon by Town. If it is later determined that the Contractor did not comply with 2 CFR Pt. 180(C) and 2 CFR Pt. 3000(C), in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- e. If it is later determined that the Contractor did not comply with 2 CFR Pt. 180(C) and 2 CFR Pt. 3000(C), in addition to remedies available to an alternative applicant or subrecipient of this Agreement, the Town may pursue available remedies, including but not limited to suspension and/or debarment.
- f. The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under this Agreement is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:
 - i. Checking the System for Award Management at website: <http://www.sam.gov>
 - ii. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror).
 - iii. Inserting a clause or condition in the covered transaction with the lower tier contract.

8. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. §1352) (2 CFR PT. 200, APP. II (J))

- a. The Contractor shall require that any subcontractor files the certification required by 31 U.S.C. § 1352, including but not limited to certification of the following:
 - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- iii. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

9. PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.323) (2 CFR PT. 200 APP. II (J)).

- a. The Contractor shall comply with Section 6002 of the Resource Conservation and Recovery Act.
- b. The Contractor shall make maximum use of items designated in the guidelines of the EPA at 40 CFR Pt. 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, unless the product cannot be acquired:
 - i. competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. to meet contract performance requirements; or
 - iii. at a reasonable price.

10. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR § 200.216) (2 CFR PT. 200 APP. II (K))

- a. The Contractor and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - i. Procure or obtain;
 - ii. Extend or renew a contract to procure or obtain; or
 - iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- iv. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- v. Telecommunications or video surveillance services provided by such entities or using such equipment.
- vi. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

11. DOMESTIC PREFERENCES FOR PROCUREMENTS (2 CFR § 200.322) (2 CFR PT. 200 APP. II(L))

- a. In all subawards including all contracts and purchase orders for work or products under this award the Contractor shall include the following:
 - i. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
 - ii. For purposes of this section:
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete;

glass, including optical fiber; and lumber.

12. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

- a. Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009 (ref:<http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.
- b. In support of this initiative, the Town encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the Project.

13. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR §175.15)

- a. The Contractor, its employees, subrecipients under this Agreement, and subrecipients' employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
- b. The Town may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
 - i. is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of

this award term through conduct that is either:

1. Associated with performance under this award; or
 2. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.
- c. If the Contractor is not a private entity: the Town may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- i. is determined to have violated an applicable prohibition in paragraph a.1 of this award; or
 - ii. has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 1. Associated with performance under this award; or
 2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.
- d. The Contractor must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- i. The right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - ii. implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - iii. is in addition to all other remedies for noncompliance that are available to us under this award.
 - iv. the Contractor must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- e. Definitions. For purposes of this award term:
- i. “Employee” means either:
 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii. “Private entity” means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25 and includes:
 1. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 2. A for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

14. DRUG-FREE WORKPLACE (2 CFR §182 AND §1401)

- a. The Department of the Interior regulations at 2 CFR § 1401—Government-wide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR §182.
- b. During the performance of this Agreement, the Contractor agrees to:
 - i. provide a drug-free workplace for the Contractor's employees;
 - ii. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - iii. state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free

workplace; and

- iv. include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**Town of Taos Mutual Benefits Water Project
Well 10 Pitless Adapter and Submersible Pump Installation**

Technical Specifications

DIVISION 1 – GENERAL REQUIREMENTS

01 11 00	Summary of Work
01 33 00	Submittal Procedures
01 40 00	Quality Requirements
01 42 19	Reference Standards
01 50 00	Temporary Facilities and Controls
01 57 23	Stormwater Pollution Prevention Plan
01 60 00	Product Requirements
01 70 00	Contract Closeout
01 78 39	Project Record Drawings
01 89 13	Site Preparation



DIVISION 2 – SITE WORK

02 21 00	Existing Underground Utilities
----------	--------------------------------

DIVISION 33 – UTILITIES

33 11 36	Pitless Adapter and Submersible Well Pump
----------	---

SECTION 01 11 00
SUMMARY OF WORK

PART 1 GENERAL

1.1 Section Includes

- A. Work description.
- B. Future work.
- C. Specification conventions.

1.2 Work Description

- A. The project installs one deep municipal supply well.
- B. The project includes:
 - 1. Mobilization/demobilization, site preparation, installation of a pitless adapter and submersible pump.
 - 2. Restoration of site.
- C. All scope of work items are to be conducted according to the construction drawings and technical specifications included with these Contract Drawings and Bid Documents.
- D. Perform Work of Contract in accordance with Conditions of Contract.

1.3 Specification Conventions

- A. These specifications are written in imperative mood and streamlined form. This imperative language is directed to the Contractor, unless specifically noted otherwise. The words “shall be” are included by inference where a colon (:) is used within sentences or phrases.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION

SECTION 01 33 00

SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 Section Includes

- A. Transmittal of submittals
- B. Submittal procedures
- C. Definition of submittal types for construction
- D. Submittals for contract closeout
- E. Forms for transmittal and review

1.2 Related Sections

- A. Section 01 78 39 Project Record Documents

1.3 Definitions

- A. Action Submittals: Written and graphic information and physical samples that require the Engineer's responsive action. Action submittals are those submittals indicated in individual Specification Sections as "action submittals."
- B. Informational Submittals: Written or graphic information and physical samples that do not require the Engineer responsive action. Submittals may be rejected for not complying with requirements. Informational submittals are those submittals indicated in individual Specification Sections as "informational submittals."
- C. Close-out Submittals: Written and graphic information and extra stock materials that require Engineer responsive action. Close-out submittals are those submittals indicated in individual Specification Sections as "close-out submittals."
- D. Portable Document Format (PDF): An open standard file format licensed by Adobe Systems used for representing documents in a device-independent and display resolution-independent fixed-layout document format.

1.4 Action Submittals

- A. Submittal Schedule: Submit a schedule of submittals, arranged in chronological order by dates required by construction schedule. Include time required for review, ordering, manufacturing, fabrication, and delivery when establishing dates. Include additional time required for making corrections or revisions to submittals noted by Engineer and additional time for handling and reviewing submittals required by those corrections.

1. Coordinate submittal schedule with list of subcontracts, the schedule of values, and Construction Subcontractor's construction schedule.
2. Initial Submittal: Submit concurrently with startup construction schedule. List those submittals required to maintain orderly progress of the Work and those required early because of long lead time for manufacture or fabrication.
3. Final Submittal: Submit concurrently with the first complete submittal of Construction Subcontractor's construction schedule.
 - a. Submit revised submittal schedule to reflect changes in current status and timing for submittals.
4. Format:
 - a. Use DBS&A Construction Submittal Log. The Submittal Transmittal form is provided as Attachment A.

1.5 Submittal Administrative Requirements

- A. Transmittal of Submittals:
 1. Provide submittals as indicated in the specific specification sections.
 2. Use a DBS&A Submittal Transmittal Form to transmit submittals at the times specified in the log.
 - a. Obtain electronic version of Submittal Transmittal Form at the preconstruction conference for use during construction. The Submittal Transmittal form is provided as Attachment A.
 3. Engineer Digital Data Files: Electronic digital files of the Construction Subcontract Drawings will be provided by Engineer for Construction Subcontractor's use in preparing submittals.
 4. Engineer will furnish Construction Subcontractor one set of digital data drawing files of the Contract Drawings for use in preparing Submittals, Shop Drawings, Delegated Design Submittals, and Project record drawings.
 - a. Digital Drawing Software Program: The Contract Drawings are available in AutoCAD Civil 3D 2018.
- B. Pre-Construction Submittals
 1. At or before the pre-construction conference, the Contractor shall submit the following in accordance with the General Conditions of the Construction Contract:
 - a. Construction schedule
 - 1) Gantt chart format, showing all major items of work and sequencing to achieve substantial completion within the contract time.
 - 2) The construction schedule shall be updated to show percent completion by task and the updated schedule shall be submitted with each pay request, or at a minimum monthly.
 - b. Schedule of Submittals
 - c. Schedule of Values
- C. Coordination: Coordinate preparation and processing of submittals with performance of construction activities.
 1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.

2. Submit all submittal items required for each Specification Section concurrently unless partial submittals for portions of the Work are indicated on approved submittal schedule (e.g., close-out submittals). In general, submitting earlier than required is always allowed/preferable.
 3. Submit action submittals, informational submittals and sustainable design submittals required by the same Specification Section as one submittal under the same transmittal.
 4. Submit close-out submittals required by the same Specification Section as separate package under separate transmittal as indicated on approved submittal schedule.
 5. Submit delegated design submittals required by same Specification Section as one submittal under the same transmittal.
 6. Coordinate transmittal of different types of submittals for related parts of the Work so processing will not be delayed because of need to review submittals concurrently for coordination.
 - a. Engineer reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- D. Processing Time: Allow time for submittal review, including time for resubmittals, as follows. Time for review shall commence on Engineer's receipt of submittal. No extension of the Contract Time will be authorized because of failure to transmit submittals enough in advance of the Work to permit processing, including submittals.
1. Product data, samples, design data, test reports, qualification data and certifications: Allow 5 working days for review of each submittal. Allow additional time if coordination with subsequent submittals is required. Engineer will advise Construction Subcontractor when a submittal being processed must be delayed for coordination.
 2. Shop drawings, coordination drawings, sustainable design and delegated design submittals: Allow 10 working days for review of each submittal. Allow additional time if coordination with subsequent submittals is required. Engineer will advise Construction Subcontractor when a submittal being processed must be delayed for coordination.
 3. Close-out submittals: Allow 10 working days for review of each submittal. Allow additional time if coordination with subsequent submittals is required. Engineer will advise Construction Subcontractor when a submittal being processed must be delayed for coordination.
 4. Resubmittal Review: Allow 10 working days for review of each resubmittal.
 5. The Construction Subcontractor shall allow a minimum of 5 working days after completion of the submittal review for return of submittals.
- E. Submittal Review
1. After review of the submittal package the "Action Code" will be indicated on the submittal routing sheet and returned to the Construction Subcontractor. Review of submittals will be indicated on each Submittal Routing sheet by appropriate signature, stamp, and date.
 2. Engineer will document submittal review comments on the Submittal Review Record form. Retain submittal review comments with the submittal documents.

3. DBS&A will use the following “Action Codes” to indicate the status of submittals resulting from the review, and the action required of the Construction Subcontractor:
 - a. Furnish as submitted
 - b. Furnish as noted
 - c. Revise and resubmit
 - d. Rejected
 - e. Engineer’s review not required.

- F. Electronic Submittals: Identify and incorporate information in each electronic submittal file as follows:
 1. Assemble complete submittal package into a single indexed file incorporating submittals of a single Submittal Log item and Submittal Transmittal Form with links enabling navigation to each item.
 2. Name file with sequential submittal number, including revision identifier (A, B, C, etc.).
 3. Transmittal Form for Electronic Submittals: Use DBS&A Submittal Transmittal Form. Form shall be converted to PDF and combined with submittal PDF into a single PDF file.

- G. Options: Identify options requiring selection of Engineer.

- H. Resubmittals: Make resubmittals in same form and number of copies as initial submittal.
 1. Note date and content of previous submittal.
 2. Note date and content of revision in label or title block and clearly indicate extent of revision.
 3. Resubmit submittals until they are marked with approval notation from Engineer’s action code.

- I. Distribution: Furnish copies of final submittals to manufacturers, subcontractors, suppliers, fabricators, installers, and others as necessary for performance of construction activities. Show distribution on transmittal forms.

- J. Use for Construction: Retain complete copies of submittals on Project site. Use only final action submittals that are marked with approval notation from Engineer’s action code.

PART 2 PRODUCTS

2.1 Submittal Procedures

- A. General Submittal Procedure Requirements: Prepare and submit submittals required by individual Specification Sections. Types of submittals are indicated in individual Specification Sections.
 1. Post electronic submittals as PDF electronic files directly to website specifically established for Project.
 - a. Engineer will return annotated file. Annotate and retain one copy of file as an electronic Project record document file.

2. Certificates and Certifications Submittals: Provide a statement that includes signature of entity responsible for preparing certification. Certificates and certifications shall be signed by an officer or other individual authorized to sign documents on behalf of that entity.
 - a. Provide a digital signature with digital certificate on electronically submitted certificates and certifications where indicated.
 - b. Provide a notarized statement on original paper copy certificates and certifications where indicated.

- B. Calculations: Prepare design calculations to document analytical determinations to reflect the basis for selection of systems and components. Room numbers, equipment nomenclature, fixture numbers, zone numbers, or any other designations must be consistent with those indicated on the drawings or specifications. Calculations must be checked, reviewed, sealed when required and dated by the designer and checker, and complete in all respects.

- C. Product Data: Collect information into a single submittal for each element of construction and type of product or equipment.
 1. If information must be specially prepared for submittal because standard published data are not suitable for use, submit as Shop Drawings, not as Product Data.
 2. Mark each copy of each submittal to show which products and options are applicable.
 3. Include the following information, as applicable:
 - a. Manufacturer's catalog cuts.
 - b. Manufacturer's product specifications.
 - c. Standard color charts.
 - d. Statement of compliance with specified referenced standards.
 - e. Testing by recognized testing agency.
 - f. Application of testing agency labels and seals.
 - g. Notation of coordination requirements.
 - h. Availability and delivery time information.
 4. For equipment, include the following in addition to the above, as applicable:
 - a. Wiring diagrams showing factory-installed wiring.
 - b. Printed performance curves.
 - c. Operational range diagrams.
 - d. Clearances required to other construction, if not indicated on accompanying Shop Drawings.
 5. Submit Product Data before or concurrent with Samples.
 6. Submit Product Data in the following format:
 - a. PDF electronic file.
 - b. Five paper copies of Product Data unless otherwise indicated. Engineer will return one copy.

- D. Qualification Data (QD): Prepare written information that demonstrates capabilities and experience of firm or person. Include lists of completed projects with project names and addresses, contact information of architects and owners, and other information specified.

- E. Project Record Documents: Comply with requirements specified in Section 01 78 39 Project Record Documents.
- F. Samples/Colors: Submit Samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and actual component as delivered and installed.
- G. Shop Drawings: Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Construction Subcontract Documents or standard printed data unless submittal based on Engineer's digital data drawing files is otherwise permitted.
 - 1. Preparation: Fully illustrate requirements in the Construction Subcontract Documents. Include the following information, as applicable:
 - a. Identification of products.
 - b. Schedules.
 - c. Compliance with specified standards.
 - d. Notation of coordination requirements.
 - e. Notation of dimensions established by field measurement.
 - f. Relationship and attachment to adjoining construction clearly indicated.
 - g. Seal and signature of professional engineer if specified.
- H. Spare Parts and Maintenance Materials: Submit spare parts, extra materials and maintenance materials in quantities, sizes, finishes and colors as identified in each specific specification. Parts and materials to be in manufacturer's original packaging with original labeling. Identify location where parts or materials are installed within facility.
 - 1. Description of product.
 - 2. Test procedures and results.
 - 3. Limitations of use.
- I. Warranty: Submit written and executed documentation of warranties as specified in applicable specification sections. Refer to Section 01 78 23 Operation and Maintenance Data.

PART 3 EXECUTION

3.1 Construction Subcontractor's Review

- A. Review each submittal and check for coordination with other Work of the Contract and for compliance with the Construction Subcontract Documents. Note corrections and field dimensions
- B. Construction Subcontractor Review: Certify that submittal has been reviewed, checked, and approved for compliance with the Construction Subcontract Documents in Section 1 of the DBS&A Submittal Transmittal form. Provide any comments on the DBS&A Submittal Transmittal form.

3.2 Engineer's Action

- A. Action Submittals: Engineer will review each submittal, make marks to indicate corrections or revisions required, and return it. Engineer will indicate action code on DBS&A Submittal Review form. Provide any comments on the DBS&A Submittal Review Record Form.
- B. Informational Submittals: Engineer will review each submittal and will not return it, or will return it if it does not comply with requirements. Engineer will forward each submittal to appropriate party.
- C. Partial submittals prepared for a portion of the Work will be reviewed when use of partial submittals has received prior approval from Engineer.
- D. Incomplete submittals are unacceptable, will be considered nonresponsive, and will be returned for resubmittal without review.
- E. Submittals not required by the Construction Subcontract Documents may be returned by the Engineer without action.

END OF SECTION

Attachment A: Submittal Transmittal Form



Submittal Transmittal No. _____ - _____
 (Spec Section) (Series)

Project Name:		Date reviewed:			
Contractor:		DBS&A Engineering	Reviewed by:		
Address:		6020 Academy Road NE, Suite 100 Albuquerque, NM 87109	Job no.		
			Spec section:		
Attn:		Attn:	Drawing/Detail no.		
			1st Submittal <input type="checkbox"/> Resubmittal <input type="checkbox"/>		
Date transmitted:		Previous transmittal date:			
Item No.	No. Copies	Description	Manufacturer / Vendor	Mft/Vendor Dwg. or Data No.	Action Taken *
1					
2					
3					
4					
Remarks:					

* Action codes:

- | | |
|--|---|
| A – Furnish as submitted
B – Furnish as noted
C – Revise and resubmit:
1. Not enough information for review.
2. No reproducibles submitted.
3. Copies illegible.
4. Not enough copies submitted.
5. See Comments. | D – Rejected
E – Engineer’s review not required:
1. Submittal not required.
2. Supplemental information. Submittal refined for informational purposes only.
3. Information reviewed on prior submittal.
4. For information only.
5. See Comments. |
|--|---|

Contractor:

Certify either:

- A. We have verified that the material or equipment contained in this signature meets all requirements, including coordination with all related work, as specified (no exceptions)
- B. We have verified that the material contained in this submittal meets all the requirements specified except for the deviations noted below.

No. Deviation

Certified by:

Contractor’s Signature, By: _____

Date _____

Engineer’s Comments:

Comments:

Distribution: Contractor File Engineer’s Signature By: Field Owner Date Other



This review is only for general conformance with the design concept and the information given in the Construction Documents. Corrections or comments made on the shop drawings during this review do not relieve the contractor from compliance with the requirements of the drawings and specifications. Review of a specific item shall not include review of an assembly of which the item is a component. The Contractor is responsible for dimensions to be confirmed and correlated at the jobsite, information sequences and procedures of construction, coordination of the Work with that of all other trades, and performing all Work in a safe and satisfactory manner.

SECTION 01 40 00
QUALITY REQUIREMENTS

PART 1 GENERAL

1.1 Section Includes

- A. Quality control and control of installation.
- B. Tolerances.
- C. References.
- D. Testing and inspection services.
- E. Manufacturers' field services.
- F. Examination.
- G. Preparation.

1.2 Quality Control and Control of Installation

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with manufacturers' instructions, including each step in sequence.
- C. When manufacturers' instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
- D. Comply with specified standards as minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform Work by persons qualified to produce required and specified quality.
- F. Verify field measurements are as indicated on Shop Drawings or as instructed by manufacturer.
- G. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.

1.3 Tolerances

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.

- B. Comply with manufacturers' tolerances. When manufacturers' tolerances conflict with Contract Documents, request clarification from Engineer before proceeding.
- C. Adjust products to appropriate dimensions; position before securing products in place.

1.4 References

- A. For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of standards, except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current on date of Contract Documents, except where specific date is established by code.
- C. Obtain copies of standards where required by product specification sections.
- D. When specified reference standards conflict with Contract Documents, request clarification from Engineer before proceeding.
- E. Neither contractual relationships, duties, nor responsibilities of parties in Contract or those of Engineer shall be altered from Contract Documents by mention or inference otherwise in reference documents.

1.5 Testing and Inspection Services

- A. Employ and pay for services of an independent testing agency or laboratory acceptable to Owner to perform specified testing.
 - 1. Prior to start of Work, submit testing laboratory name, address, and telephone number, and names of full-time registered Engineer and responsible officer.
- B. The independent firm will perform tests, inspections, and other services specified in individual specification sections and as required by Engineer.
 - 1. Laboratory: Authorized to operate at Project location.
 - 2. Laboratory Staff: Maintain full-time specialist on staff to review services.
 - 3. Testing Equipment: Calibrated at reasonable intervals with devices of accuracy traceable to National Bureau of Standards or accepted values of natural physical constants.
- C. Testing, inspections and source quality control may occur on or off project site. Perform off-site testing as required by Engineer or Owner.
- D. Reports will be submitted by independent firm to Architect/Engineer, Contractor, and authority having jurisdiction, in duplicate, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
 - 1. Submit final report indicating correction of Work previously reported as non-compliant.
- E. Cooperate with independent firm; furnish samples of materials, design mix, equipment, tools, storage, safe access, and assistance by incidental labor as requested.

1. Notify Engineer and independent firm 48 hours prior to expected time for operations requiring services.
 2. Make arrangements with independent firm and pay for additional samples and tests required for Contractor's use.
- F. Testing and employment of testing agency or laboratory shall not relieve Contractor of obligation to perform Work in accordance with requirements of Contract Documents.
- G. Re-testing or re-inspection required because of non-conformance to specified requirements shall be performed by same independent firm on instructions by Architect/Engineer. Payment for re-testing or re-inspection will be charged to Contractor by deducting testing charges from Contract Sum/Price.
- H. Agency Responsibilities:
1. Test samples of mixes submitted by Contractor.
 2. Provide qualified personnel at site. Cooperate with Engineer and Contractor in performance of services.
 3. Perform specified sampling and testing of products in accordance with specified standards.
 4. Ascertain compliance of materials and mixes with requirements of Contract Documents.
 5. Promptly notify Engineer and Contractor of observed irregularities or non-conformance of Work or products.
 6. Perform additional tests required by Architect/Engineer.
 7. Attend preconstruction meetings and progress meetings.
- I. Agency Reports: After each test, promptly submit two copies of report to Architect/Engineer, Contractor, and authority having jurisdiction. When requested by Architect/Engineer, provide interpretation of test results. Include the following:
1. Date issued.
 2. Project title and number.
 3. Name of inspector.
 4. Date and time of sampling or inspection.
 5. Identification of product and specifications section.
 6. Location in Project.
 7. Type of inspection or test.
 8. Date of test.
 9. Results of tests.
 10. Conformance with Contract Documents.
- J. Limits On Testing Authority:
1. Agency or laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.
 2. Agency or laboratory may not approve or accept any portion of the Work.
 3. Agency or laboratory may not assume duties of Contractor.
 4. Agency or laboratory has no authority to stop the Work.

1.6 Manufacturers' Field Services

- A. When specified in individual specification sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, test, adjust and balance of equipment as applicable, and to initiate instructions when necessary.
- B. Submit qualifications of observer to Engineer 20 days in advance of required observations. Observer subject to approval of Engineer.
- C. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

3.1 Examination

- A. Verify existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify existing substrate is capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Verify utility services are available, of correct characteristics, and in correct locations.

3.2 Preparation

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying new material or substance in contact or bond.

END OF SECTION

SECTION 01 42 19

REFERENCE STANDARDS

PART 1 GENERAL

1.1 Work Included

- A. Abbreviations and acronyms used in Contract Documents to identify reference standards.

1.2 Quality Assurance

- A. Applications: when a standard is specified by reference, comply with requirements and recommendations stated in that standard, except when requirements are modified by the Contract Documents or applicable codes establish stricter standards.
- B. Publication Date: the publication in effect on the date of bid, except when a different publication date is specified.

1.3 Abbreviations, Names, and Addresses of Organizations

- A. Obtain copies of referenced standards direct from publication source, when needed for proper performance of Work, or when required for submittal by Contract Documents.

AA	Aluminum Association 818 Connecticut Avenue, NW Washington, DC 20006
AASHTO	American Association of State Highway and Transportation Officials 444 North Capital Street NW Washington, DC 20001
ACI	American Concrete Institute Box 19150, Redford Station Detroit, MI 48219
AI	Asphalt Institute Research Park Drive PO Box 14052 Lexington, KY 40512-4052
AISC	American Institute of Steel Construction 1221 Avenue of the Americas New York, NY 10020
AISI	American Iron and Steel Institute 1000 16th Street, NW Washington, DC 20036

ANSI	American National Standards Institute 1430 Broadway New York, NY 10018
ANST	American Society for Nondestructive Testing 1711 Arlingate Lane Columbus, OH 43228-0518
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers 345 East 47th Street New York, NY 10017
ASTM	American Society for Testing and Materials 1916 Race Street Philadelphia, PA 19103
AWWA	American Water Works Association 6666 West Quincy Avenue Denver, CO 80235
AWS	American Welding Society 2501 NW 7th Street Miami, FL 33125
CRSI	Concrete Reinforcing Steel Institute 180 North LaSalle Street, Suite 2110 Chicago, IL 60601
FS	Federal Specification General Services Administration Specifications and Consumer Information Distributions Section (WESIS) Washington Navy Yard, Bldg. 197 Washington, DC 20407
MIL	Military Specification Naval Publications and Forms Center 5801 Tabor Avenue Philadelphia, PA 19120
NACE	National Association of Corrosion Engineers 15835 Park Ten Place Houston, Texas 77084, USA
NEMA	National Electrical Manufacturers Association 2101 L Street, NW Washington, DC 20037
NFPA	National Fire Protection Association 470 Atlantic Avenue Boston, MA 02210
NSF	National Sanitation Foundation 789 N. Dixboro Road Ann Arbor, MI 48105

OSHA	Occupational Safety and Health Administration 200 Constitution Ave. NW Washington, DC 20210
PCA	Portland Cement Association 5420 Old Orchard Road Skokie, IL 60076
PCI	Prestressed Concrete Institute 20 North Wacker Drive Chicago, IL 60606
PS	Product Standard U.S. Department of Commerce Washington, DC 20203
SDI	Steel Door Institute 712 Lakewood Center North Cleveland, OH 44107
SIGMA	Sealed Insulating Glass Manufacturers Association 111 East Wacker Drive Chicago, IL 60601
SJI	Steel Joist Institute 1703 Parham Road, Suite 204 Richmond, VA 23229
UL	Underwriters' Laboratories, Inc. 333 Pfingston Road Northbrook, IL 60062

END OF SECTION

SECTION 01 50 00

TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.1 Section Includes

- A. Temporary Utilities:
 - 1. Temporary electricity.
 - 2. Temporary lighting for construction purposes.
 - 3. Temporary heating.
 - 4. Temporary cooling.
 - 5. Temporary ventilation.
 - 6. Temporary water service.
 - 7. Temporary sanitary facilities.

- B. Construction Facilities:
 - 1. Field offices and sheds.
 - 2. Vehicular access.
 - 3. Parking.
 - 4. Progress cleaning and waste removal.
 - 5. Project identification.
 - 6. Traffic regulation.
 - 7. Fire prevention facilities.

- C. Temporary Controls:
 - 1. Barriers.
 - 2. Enclosures and fencing.
 - 3. Security.
 - 4. Water control.
 - 5. Dust control.
 - 6. Erosion and sediment control.
 - 7. Pest control.
 - 8. Pollution control.
 - 9. Rodent control.

- D. Removal of utilities, facilities, and controls.

1.2 Temporary Electricity

- A. There is no existing power at the work site. All power must be provided by the Contractor.

1.3 Temporary Lighting For Construction Purposes

- A. Provide and maintain lighting for construction operations.
- B. Maintain lighting and provide routine repairs.

1.4 Temporary Heating

- A. Provide and pay for heating devices and heat as needed to maintain specified conditions for construction operations.

1.5 Temporary Cooling

- A. Provide and pay for cooling devices and cooling as needed to maintain specified conditions for construction operations.

1.6 Temporary Ventilation

- A. Ventilate enclosed areas to achieve curing of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.

1.7 Temporary Water Service

- A. The Rio Pueblo site has no water service available. The Contractor will provide any water necessary for construction of this well. Provide and pay for suitable quality water service as needed to maintain specified conditions for construction operations. Contractor to coordinate connection to an existing water source with Taos Utilities. Provide separate metering and reimburse Owner for cost of water used.

1.8 Temporary Sanitary Facilities

- A. Provide and maintain required facilities and enclosures. Existing facility use is not permitted. Provide facilities at time of project mobilization.

1.9 Field Offices and Sheds

- A. Do not use existing facilities for field offices or for storage.
- B. Office: Weather tight, with lighting, electrical outlets, heating, cooling and ventilating equipment, and equipped with sturdy furniture and drawing display table.
- C. Storage Areas And Sheds: Size to storage requirements for products of individual Sections, allowing for access and orderly provision for maintenance and for inspection of products to requirements of Section 01 60 00 Product Requirements.
- D. Preparation: Fill and grade sites for temporary structures sloped for drainage away from buildings.
- E. Removal: At completion of Work remove buildings, foundations, utility services, and debris. Restore areas.

1.10 Vehicular Access

- A. Construct temporary all-weather access roads from public thoroughfares to serve construction area, of width and load-bearing capacity to accommodate unimpeded traffic for construction purposes as needed with Owner/Engineer approval.

- B. Construct culverts to span low areas and allow unimpeded drainage as needed.
- C. Extend and relocate vehicular access as Work progress requires, provide detours as necessary for unimpeded traffic flow.
- D. Location approved by Owner.
- E. Provide unimpeded access for emergency vehicles. Maintain 20-foot-wide driveways with turning space between and around combustible materials.
- F. Provide and maintain access to fire hydrants and control valves free of obstructions.
- G. Provide means of removing mud from vehicle wheels before entering streets.
- H. Use designated existing on-site roads for construction traffic.

1.11 Parking

- A. Arrange for temporary gravel surface parking areas to accommodate construction personnel.
- B. Locate as approved by Owner.
- C. When site space is not adequate, provide additional off-site parking.
- D. Use of designated existing on-site streets and driveways used for construction traffic is permitted. Tracked vehicles not allowed on paved areas.
- E. Use of existing parking facilities used by construction personnel is not permitted.
- F. Do not allow heavy vehicles or construction equipment in parking areas.
- G. Do not allow vehicle parking on existing pavement.
- H. Maintenance:
 - 1. Maintain traffic and parking areas in sound condition free of excavated material, construction equipment, products, mud, snow, and ice.
 - 2. Maintain existing paved areas used for construction; promptly repair breaks, potholes, low areas, standing water, and other deficiencies to maintain paving and drainage in original, or specified, condition.
- I. Mud from Site Vehicles: Provide means of removing mud from vehicle wheels before entering streets.

1.12 Progress Cleaning and Waste Removal

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in clean and orderly condition.

- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, prior to enclosing spaces.
- C. Broom and vacuum clean interior areas prior to start of surface finishing, and continue cleaning to eliminate dust.
- D. Collect and remove waste materials, debris, and rubbish from site periodically and dispose off-site.
- E. Open free-fall chutes are not permitted. Terminate closed chutes into appropriate containers with lids.

1.13 Traffic Regulation

- A. Signs, Signals, And Devices:
 - 1. Post-Mounted and Wall-Mounted Traffic Control and Informational Signs: As approved by authority having jurisdiction.
 - 2. Automatic Traffic Control Signals: As approved by local jurisdictions.
 - 3. Traffic Cones and Drums, Flares and Lights: As approved by authority having jurisdiction.
 - 4. Flagperson Equipment: As required by authority having jurisdiction.
- B. Flag Persons: Provide trained and equipped flag persons to regulate traffic when construction operations or traffic encroach on public traffic lanes.
- C. Flares and Lights: Use flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.
- D. Haul Routes:
 - 1. Consult with authority having jurisdiction, and establish public thoroughfares to be used for haul routes and site access.
- E. Traffic Signs and Signals:
 - 1. Provide signs at approaches to site and on site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.
 - 2. Relocate as Work progresses to maintain effective traffic control.
- F. Removal:
 - 1. Remove equipment and devices when no longer required.
 - 2. Repair damage caused by installation.
 - 3. Remove post settings to depth of 2 feet.

1.14 Fire Prevention Facilities

- A. Establish fire watch for cutting and welding and other hazardous operations capable of starting fires. Maintain fire watch before, during, and after hazardous operations until threat of fire does not exist.
- B. Portable Fire Extinguishers: NFPA 10; 10-pound capacity, 4A-60B: C UL rating.

1. Provide minimum one fire extinguisher in every construction trailer and storage shed.

1.15 Barriers

- A. Provide barriers to prevent unauthorized entry to construction areas, and to protect existing facilities and adjacent properties from damage from construction operations.
- B. Provide protection for plants designated to remain. Replace damaged plants.
- C. Protect non-owned vehicular traffic, stored materials, site, and structures from damage.

1.16 Enclosures and Fencing

- A. Provide 6-foot-high fence around construction site; equip with vehicular and pedestrian gates with locks where existing fence is removed or as necessary to enclose staged equipment or material.

1.17 Security

- A. Security Program:
 1. Protect Work and Owner's operations from theft, vandalism, and unauthorized entry.
 2. Maintain program throughout construction period until Owner acceptance precludes need for Contractor security.
- B. Entry Control:
 1. Restrict entrance of persons and vehicles into Project site and existing facilities.
 2. Coordinate access of Owner's personnel to site in coordination with Owner's security forces.

1.18 Water Control

- A. Grade site to drain. Maintain excavations free of water. Provide, operate, and maintain pumping equipment.
- B. Protect site from puddling or running water. Provide water barriers as required to protect site from soil erosion.

1.19 Dust Control

- A. Execute Work by methods to minimize raising dust from construction operations.
- B. Provide positive means to prevent airborne dust from dispersing into atmosphere.

1.20 Erosion and Sediment Control

- A. Plan and execute construction by methods to control surface drainage from cuts and fills from borrow and waste disposal areas. Prevent erosion and sedimentation.

- B. Provide temporary measures including berms, dikes, and drains, and other devices to prevent water flow off site.
- C. Construct fill and waste areas by selective placement to avoid erosive surface silts or clays.
- D. Periodically inspect earthwork to detect evidence of erosion and sedimentation; promptly apply corrective measures.

1.21 Pollution Control

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances and pollutants produced by construction operations.
- B. Comply with pollution and environmental control requirements of authorities having jurisdiction.

1.22 Removal of Utilities, Facilities, and Controls

- A. Remove temporary utilities, equipment, facilities, and materials prior to Final Application for Payment inspection.
- B. Remove underground installations to minimum depth of 2 feet. Grade site as indicated on Drawings.
- C. Clean and repair damage caused by installation or use of temporary work.
- D. Restore existing and permanent facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION

SECTION 01 57 23

STORMWATER POLLUTION PREVENTION PLAN

PART 1 GENERAL

1.1 Work Included

- A. Prepare a Stormwater Pollution Prevention Plan (SWPPP) to provide temporary measures to control water pollution and soil erosion from all construction activities and prevent sedimentation of arroyos and rivers and the pollution of private properties from stormwater, as required by the Clean Water Act (CWA) in accordance with the National Pollutant Discharge Elimination System (NPDES) Phase II Regulations. The Contractor shall maintain the SWPPP for the entire duration of the construction.
- B. Temporary control may include work outside the construction limits, such as borrow pit operations, equipment and material storage sites, waste areas, and temporary plant sites.

1.2 Related Work

- A. Section 01 89 13 - Site Preparation

1.3 Submittals

- A. Copies of SWPPP to the Owner and Engineer.

PART 2 PRODUCTS

2.1 General

- A. Materials for temporary erosion and sediment control shall conform to details shown in the drawings and the requirements of referenced specifications.
- B. Materials for filter dams check dams, sediment basins, and sediment traps shall consist of straw bale barriers or siltation fences, rock, brush, bagged sand, riprap, soil retention blankets, masonry blocks, lumber, or other erosion resistant material.
- C. Degradable materials furnished for temporary erosion and sediment control measures shall be of a quality and durability to remain fully effective for the purpose intended throughout the time period required.
- D. Slope drain material shall consist of pipe, flexible pipe, and riprap. Other materials may be used if approved by the Project Manager/Engineer.
 - 1. Pipe. Steel pipe and appurtenances shall conform to requirements of AASHTO M 36, and corrugated polyethylene pipe, couplings, and fittings shall conform to requirements of AASHTO M 252 for diameters of 3 to 10 inches and AASHTO M 294 for diameters greater than 10 inches.
 - 2. Other types of pipe may be used when approved by the Engineer.

- E. Soil retention blankets shall be PPS Super Duty, American Excelsior High Velocity, North American Green S-150 or approved equal.
- F. Riprap and rock plating shall conform with requirements of Section 602 of New Mexico Department of Transportation (NMDOT), Standard Specifications for Highway and Bridge Construction (SSHBC) latest edition.
- G. Temporary soil stabilization agent shall be a product approved and listed as approved on the NMSHTD's "Approved Products Listing" unless another product is specifically designated for use in the contract.
- H. The substance shall contain an anti-foaming agent and a color additive to assist the applicator in uniform application of this product and which will disappear from the surface within 36 hours after application.

PART 3 EXECUTION

3.1 General

- A. Implement temporary pollution control measures to minimize soil erosion to comply with NPDES stormwater discharge permit requirements for construction activities. Provide temporary control measures as indicated in the SWPPP filed on-site.
- B. Implement all applicable features of the SWPPP prior to beginning construction. Complete all temporary pollution control features at the earliest practicable time and use such measures to comply with NPDES permit terms and conditions to correct unforeseen conditions that occur during construction or to correct conditions that are needed prior to completion of permanent soil erosion and sediment control measures.
- C. Limit the surface area of erodible earth material exposed by clearing and grubbing, excavation, or borrow and fill operations.
- D. Maintain erosion control features that are installed in an acceptable manner during the construction period.
- E. Provide temporary control structures whenever construction equipment must cross watercourses at frequent intervals and such crossings will adversely affect the sediment levels.
- F. Remove accumulated sediment when 50% of the storage volume has been used. All sediment disposal activities will be on-site.

3.2 Designated Areas

- A. Project areas to be included in SWPPP.
 - 1. Well equipping, staging, access road, and the Rio Pueblo Well Site.

END OF SECTION

SECTION 01 60 00

PRODUCT REQUIREMENTS

PART 1 GENERAL

1.1 Section Includes

- A. Products.
- B. Product delivery requirements.
- C. Product storage and handling requirements.
- D. Product options.
- E. Product substitution procedures.
- F. Equipment electrical characteristics and components.

1.2 Products

- A. Applicable Sections of the latest edition of the New Mexico Specifications for Public Works Construction shall be followed for product delivery, handling, and storage.
- B. Furnish products of qualified manufacturers suitable for intended use. Furnish products of each type by single manufacturer unless specified otherwise.

1.3 Product Delivery Requirements

- A. Transport and handle products in accordance with manufacturer instructions and the latest edition of the New Mexico Specifications for Public Works Construction.
- B. Promptly inspect shipments to ensure that products comply with requirements, quantities are correct, and products are undamaged.
- C. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage.

1.4 Product Storage and Handling Requirements

- A. Store and protect products in accordance with manufacturer instructions and the latest edition of the New Mexico Specifications for Public Works Construction.
- B. Store with seals and labels intact and legible.
- C. Store sensitive products in weather-tight, climate-controlled enclosures in an environment favorable to product.

- D. For exterior storage of fabricated products, place on sloped supports above ground.
- E. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.
- F. Store loose granular materials on solid flat surfaces in well-drained area. Prevent mixing with foreign matter.
- G. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
- H. Arrange storage of products to permit access for inspection. Periodically inspect to verify that products are undamaged and maintained in acceptable condition.

1.5 Product Options

- A. Products Specified by Naming One or More Manufacturers with Provision for Substitutions: Submit request for substitution for any manufacturer not named in accordance with the following article.

1.6 Product Substitution Procedures

- A. Engineer will consider requests for Substitutions prior to the date for receipt of Bids. Substitution Submittal Procedure prior to the date for receipt of Bids is governed by the Bidding Documents.
- B. After the date for receipt of Bids, Substitutions will only be considered when a product becomes unavailable through no fault of Contractor.
- C. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- D. A request constitutes a representation that Contractor:
 - 1. Has investigated proposed product and determined that it meets or exceeds quality level of specified product.
 - 2. Will provide same warranty for Substitution as for specified product.
 - 3. Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to Owner.
 - 4. Waives claims for additional costs or time extension which may subsequently become apparent.
 - 5. Will reimburse Owner for review or redesign services associated with reapproval by authorities having jurisdiction.
- E. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals without separate written request or when acceptance will require revision to Contract Documents.
- F. After the date for receipt of Bids, Substitution Submittal Procedure:

1. Submit four copies of request for Substitution for consideration. Limit each request to one proposed Substitution.
2. Submit Shop Drawings, Product Data, and certified test results attesting to proposed product equivalence. Burden of proof is on proposer.
3. Engineer will notify Contractor in writing of decision to accept or reject request.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION

SECTION 01 70 00
CONTRACT CLOSEOUT

PART 1 GENERAL

1.1 Work Included

- A. Comply with requirements stated in Conditions of the Contract and Specifications for administrative procedures in closing out the Work.

1.2 Related Work

- A. Section 01 78 39 Project Record Drawings

1.3 Substantial Completion

- A. When Contractor considers the Work is substantially complete, he shall submit to Engineer:
 - 1. A written notice that the Work, or designated portion thereof, is substantially complete
 - 2. A list of items to be completed or corrected.
- B. Within a reasonable amount of time after receipt of such notice, Engineer will make an inspection to determine the status of completion.
- C. Should Engineer determine that the Work is not substantially complete:
 - 1. Engineer will promptly notify the Contractor in writing, giving the reasons therefor.
 - 2. Contractor shall remedy the deficiencies in the Work and send a second written notice of substantial completion to the Engineer.
 - 3. Engineer will reinspect the Work.
- D. Upon satisfactory completion of the review, the Engineer shall issue to the contractor a written "Notice of Substantial Completion."

1.4 Final Inspection

- A. When Contractor considers the Work is complete, he shall submit written certification that:
 - 1. Contract Documents have been reviewed.
 - 2. Work has been inspected for compliance with Contract Documents.
 - 3. Work has been completed in accordance with Contract Documents.
 - 4. Equipment and systems have been tested in the presence of the Owner's representative and are operational.
 - 5. Work is completed and ready for final inspection.

- B. Engineer will make an inspection to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should Engineer consider that the Work is incomplete or defective:
 - 1. Engineer will promptly notify the Contractor in writing, listing the incomplete or defective work.
 - 2. Contractor shall take immediate steps to remedy the stated deficiencies, and send a second written certification to Engineer that the Work is complete.
 - 3. Engineer will reinspect the Work.
- D. When the Engineer finds that the Work is acceptable under the Contract Documents, he shall request the Contractor to make closeout submittals.

1.5 Reinspection Fees

- A. Should Engineer perform reinspections due to failure of the Work to comply with the claims of status of completion made by the Contractor:
 - 1. Owner will compensate Engineer for such additional services.
 - 2. Contractor shall submit purchase order to pay Engineer at Engineer's standard billing rate for all costs associated with reinspection.

1.6 Contractor's Closeout Submittals to Engineer

- A. Evidence of compliance with requirements of governing authorities.
- B. Project Record Documents: Conform to requirements of Section 01 78 39.
- C. Warranties and Bonds: Conform to requirements of General Conditions.
- D. Evidence of Payment and Release of Liens: Conform to requirements of General and Supplemental Conditions.
- E. Consent of Surety
- F. Certification of Labor Standards.

1.7 Final Adjustments of Accounts

- A. Submit a final statement of accounting to Engineer.
- B. Statement shall reflect all adjustments to the Contract Sum:
 - 1. The original Contract Sum.
 - 2. Additions and deductions resulting from:
 - a. Previous Change Orders.
 - b. Allowances.
 - c. Unit Prices.
 - d. Deductions from uncorrected Work.
 - e. Deductions for liquidated damages.
 - f. Deductions for reinspection payments.

SECTION 01 78 39

PROJECT RECORD DRAWINGS

PART 1 GENERAL

1.1 General

- A. Project Record drawings refer to those documents maintained and annotated by the Contractor during construction and are defined as:
 - 1. A neatly and legibly marked set of contract drawings showing the final location of piping, equipment, electrical conduits, outlet boxes, and cables.
 - 2. Additional documents such as schedules, lists, drawings, and electrical and instrumentation diagrams included in the specifications.
 - 3. Contractor layout and installation drawings.

- B. Unless otherwise specified, record drawings shall be full size and maintained in a clean, dry, and legible condition. Record documents shall not be used for construction purposes and shall be available for review by the Construction Manager during normal working hours at the Contractor's field office. At the completion of the work, prior to final payment, all record drawings shall be submitted to the Construction Manager.

- C. Marking of the drawings shall be kept current and shall be done at the time the material and equipment are installed. Annotations to the record documents shall be made with an erasable colored pencil conforming to the following color code:
 - 1. Additions - Red
 - 2. Deletions - Green
 - 3. Comments - Blue
 - 4. Dimensions - Graphite*

*Legibly mark to record actual depths, horizontal and vertical location of underground raceways, cables, and appurtenances referenced to permanent surface improvements.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION

SECTION 01 89 13

SITE PREPARATION

PART 1 GENERAL

1.1 Summary

- A. Section Includes:
 - 1. Removing surface debris.
 - 2. Removing designated paving, curbs, and sidewalks.
 - 3. Removing designated trees, shrubs, and other plant life.
 - 4. Removing abandoned utilities.
 - 5. Excavating topsoil.
- B. Related Sections:
 - 1. None

1.2 Definitions

- A. Clearing: Clearing is the removal from the ground surface and disposal of trees, brush, shrubs, down timber, decayed wood, other vegetation, concrete, rubbish, and debris, as well as the removal of fences, stockpiled materials, and incidental structures.
- B. Grubbing: Grubbing is the removal and disposal of all stumps, buried logs, roots, matted roots, and organic materials.

1.3 Quality Assurance

- A. Perform Work in accordance with applicable State of New Mexico Standard Specifications.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

3.1 Disposition of Trees and Shrubs

- A. General
 - 1. Do not cut or damage trees unless so indicated or unless written permission has been obtained from the affected property owner. Three copies of such permission shall be furnished to the Engineer before removal operations commence.
- B. Trees and shrubs to be removed

1. Trees and shrubs felled within the limits of work shall have their stumps grubbed and removed to a licensed disposal site. Depressions created by such removal shall be filled with structural backfill.

3.2 Clearing and Grubbing

- A. Clear all items specified herein to the limits indicated or as directed by the Engineer and stockpile cleared and grubbed material on-site. Do not start earthwork operations in areas where clearing and grubbing is not complete, except that stumps and large roots may be removed concurrent with excavation. Comply with erosion and sediment control and stormwater management measures. Super silt fence shall be installed prior to earth-moving activities.
- B. Clear and grub areas to be excavated, areas to receive fill, and areas upon which structures are to be constructed, as directed by the Engineer. Remove all trees, stumps, and root mats in these areas and dispose of them off-site at no cost to the property owner. Depressions made by the removal of stumps or roots shall be filled with suitable backfill.
- C. The Contractor shall clear, grub, and strip the site area to the limits of disturbance shown on the Contract Drawings. Clearing and grubbing shall not be performed more than 60 days before excavation is to begin.

END OF SECTION

SECTION 02 21 00

EXISTING UNDERGROUND UTILITIES

PART 1 GENERAL

1.1 Description

- A. Underground utilities are shown on the Construction Drawings based on research and limited field investigation during design. The Engineer makes no guarantees of accuracy or completeness of underground utility locations.
- B. The Contractor shall locate and pothole all utilities within the construction corridor and notify the Engineer of conflicts that are not shown on the Drawings.
- C. Contractor's Health and Safety Plan shall include working near Underground Utilities.

PART 2 MATERIALS

Not used

PART 3 EXECUTION

3.1 Physical Conditions–Underground Utilities

- A. Shown or Indicated
 - 1. The information and data shown or indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the Site is based on information and data available to the Engineer unless it is otherwise expressly provided elsewhere.
 - 2. The Engineer shall not be responsible for the accuracy or completeness of any such information or data
 - a. The Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Utility during construction, protection of Underground Utility as required by owners, for the safety of site workers and public and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.
- B. Not Shown or Indicated
 - 1. If an Underground Utility is uncovered or revealed at or contiguous to the Site that was not shown or indicated in the Contract Documents and that the Contractor could not reasonably have been expected to be aware of, the Contractor shall, promptly after becoming aware thereof and before performing any Work affected thereby, identify the location of such Underground Utility and

give written notice thereof to the Engineer. The Engineer will promptly review the Underground Utility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Utility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, the Contractor shall be responsible for worker and public safety and protection of such Underground Utility.

C. Utility Lines

1. The Contractor shall coordinate with New Mexico One Call (NMOC) prior to and during construction activities. NMOC shall be contacted a minimum of two working days in advance of digging. The NMOC statewide number is 1-800-321-2537.

END OF SECTION

SECTION 33 11 36

PITLESS ADAPTER AND SUBMERSIBLE WELL PUMP

PART 1 GENERAL

1.1 Summary

- A. Section Includes:
 - 1. Procurement and installation of one submersible pump for a municipal supply well, complete in place, including pump, motor, power cable, motor protection cables, startup services, and testing (manufacturing and field). Installation of one pitless adapter provided by the Town of Taos, complete in place.
- B. Related Sections
 - 1. Division 1 - General Requirements

1.2 References

- A. American Water Works Association (AWWA):
 - 1. AWWA A100 - Standard for Water Wells
 - 2. AWWA E102 - Submersible Vertical Turbine Pumps
 - 3. AWWA C654 - Disinfection of Wells
- B. New Mexico Environment Department-Construction Programs Bureau-Recommended Standards for Water Facilities
- C. American Society for Testing and Materials (ASTM):
 - 1. ASTM A53 - Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless
- D. Institute of Electrical and Electronics Engineers (IEEE):
 - 1. IEEE 112 - Standard Test Procedure for Polyphase Induction Motors and Generators
- E. National Electrical Manufacturers Association (NEMA):
 - 1. NEMA MG 1 - Standard Test Methods for Motors and Generators

1.3 Submittals

- A. Submit the following in accordance with 01 33 00.
 - 1. Product Data
 - a. Submersible pump
 - 1) Submit manufacturer's catalog information illustrating materials of construction and installed dimensions. Dimensions shall reference both the pump bowl diameter and the cable width.

- 2) Submit certified pump curves for total dynamic head, motor horsepower, and pump efficiency. The operating point shall be indicated for the design flow rate and total dynamic head.
- 3) Submit calculations or test data showing pump bowl hydrostatic pressure at the operating point and shutoff head.
- b. Submersible motor
 - 1) Submit manufacturer's catalog information illustrating materials of construction and installed dimensions.
 - 2) Submit motor performance curve for amperage, speed, and efficiency as a function of output horsepower.
 - 3) Submit calculations or test data showing thrust-bearing capacity.
- c. Submersible pump cable
 - 1) Submit manufacturer's catalog information illustrating materials of construction.
 - 2) Submit calculations demonstrating voltage drop under in-rush loading with across-the-line starting.
 - 3) Submit materials and methods for splicing cable to motor terminals.
- d. Column pipe: Submit manufacturer's catalog information on pipe materials and fittings. Submit mill test certificates indicating physical and chemical analysis.
- e. Column check valve: Submit manufacturer's catalog information with valve data and ratings for each service.
- f. Submit manufacturer's catalog information for related products as specified in related sections.
2. Shop Drawings
 - a. Submersible pump: Provide shop drawings that illustrate the connection to the column pipe, as well as assembly of the submersible pump, motor, and pump cable.
 - b. Check valve and control lines: Provide shop drawings that illustrate the connection to the column pipe.
 - c. Surface plate and discharge head: Provide shop drawings that illustrate penetration of surface plate with electrical cable.

1.4 Closeout Submittals

- A. Quality assurance testing: Submit the results of field startup testing.
- B. Operation and maintenance data: Submit spare parts lists and maintenance procedures in accordance with Section 01 78 23 Operation and Maintenance.

1.5 Delivery, Storage, and Handling

- A. Packaging of Equipment: Assemble equipment in factory to largest practical components to ensure proper fit, and mark parts for shipment and assembly accordingly. Equipment and parts shall be suitably protected to ensure against breakage or damage in transit.
- B. Receiving: Equipment will be examined by the Contractor and Owner upon delivery and, if found to be in satisfactory condition, will be unloaded by the Contractor. The field

examination is only for the purpose of determining apparent damage in transit. Contractor shall be responsible for storage of delivered equipment until it is installed. Care shall be taken in handling manufacturer pre-lubricated components to avoid inadvertent loss of fluids.

1.6 Quality Assurance

- A. Factory Testing: Certified factory tests of pumping unit will be required.
1. Pumps shall be tested in accordance with Hydraulic Institute (HI) standards. The pump manufacturer test report shall include, at a minimum:
 - a. Pump manufacturer, model number, and serial number.
 - b. Motor serial number (to confirm with field installation).
 - c. Pump stages and impeller diameters.
 - d. Design conditions (flow and total dynamic head [TDH]).
 - e. Head capacity curve: Record a minimum of seven readings that vary from a no head condition to 125 percent of the design TDH. Testing results that fall outside HI standards or design conditions will be grounds for rejecting the equipment. Costs for corrections, replacing faulty equipment, and/or subsequent testing shall be at the manufacturer's expense.
 - f. Shaft brake horsepower curve for the flow rates tested.
 - g. Wire to water efficiency (overall efficiency).
 - h. Water to water efficiency (pump efficiency).
 2. Motors shall be tested in accordance with IEEE Standard 112 and NEMA MG-1. Testing shall be conducted on motor(s) planned for installation in the field. The motor manufacturer test report shall include, at a minimum:
 - a. Manufacturer, model number, and serial number.
 - b. Rated horsepower and voltage.
 - c. Nominal motor speed.
 - d. No load and locked rotor currents.
 - e. Motor winding resistance.
 - f. High potential test at 2 times the rated voltage of the motor. Refer to NEMA MG-1 to confirm the voltage test level.
 - g. Test the stator insulation resistance with a megohmmeter.
- B. Factory testing shall be conducted on the actual pumping unit(s) to be installed in the field, including the pump and motor. A factor power cable having a premeasured loss may be used in lieu of the actual pump cable. Factory testing shall be conducted after the pumping unit(s) have been fully assembled and the impeller diameters have been trimmed to meet the duty head requirements for the pump. Field conditions are to be simulated and corrections for column pipe and other losses are to be calculated and included for comparison of results with the contract curves and field test curves. Certified factory test results shall be furnished to the Engineer within three days after completion of each test. Electronic submittals are acceptable. Should the pumping unit not meet contract conditions or perform unsatisfactorily in the judgment of the Engineer or Owner, the Contractor shall correct the deficiencies, subject to Engineer approval. In no case will abnormal back filing of impellers, thinning impeller cross sections, applying coatings or other artificial, temporary improvement be acceptable to increase efficiency of the pumping unit.

- C. Field testing
 - 1. Following installation of the submersible pump and motor, field testing shall be conducted in accordance with AWWA E102.
 - 2. Field testing shall confirm operation of motor protection features and coordination with motor control center and remote SCADA system.
 - 3. A manufacturer's representative shall conduct field testing to verify proper operation of the submersible pump and to provide training upon installation.
 - 4. Costs for field visits by the manufacturer's representatives shall be considered incidental to the Work and no separate payment will be made.
- D. Perform Work in accordance with drawings and specifications.

1.7 Warranty

- A. Furnish minimum 1-year manufacturer warranty for all materials.

PART 2 PRODUCTS

2.1 Submersible Pump

- A. Manufacturers:
 - 1. Grundfos model 475S1250-12.
 - 2. 8-inch 125 HP 460V Submersible motor compatible with specified pump.
 - 3. Pump must be compatible with a variable frequency drive.
 - 4. Or Engineer-approved equal.
- B. Design point: 500 gpm at a total dynamic head of 670 feet.
- C. Well casing: 10.75-inch diameter.
- D. Materials of construction:
 - 1. Vertical turbine, multistage type, complete with motor, power cable, power cable terminus to motor, transition pieces at pump discharge, column pipe, and appurtenances. Pump bowl diameter and number of stages subject to approval by Engineer.
 - 2. The pump bowls shall be stainless steel or close-grained cast iron. The impellers shall be bronze enclosed type or stainless steel fastened to the stainless steel shaft by stainless steel collets or stainless steel keys. Carbon or mild steel will not be permitted in the pump.
 - 3. Finished bowls shall be capable of withstanding a hydrostatic pressure equal to twice the head at rated capacity or 2.0 times the shutoff head, whichever is greater.
 - 4. Impellers are to be standard product of the pump manufacturers and not contain special workmanship, materials, thinned veins, or other modifications to temporarily increase efficiency.

2.2 Submersible Motor

- A. Manufacturers:
 - 1. Grundfos
 - 2. Or Engineer-approved equal.
- B. Submersible motor: Horsepower as required to meet operating points specified in 2.1.B, two pole, designed to operate at a maximum 3,500 revolutions per minute (rpm).
- C. Protection:
 - 1. Motor shall be provided with minimum of three resistance temperature detectors (RTDs) for winding and bearing over-temperature detection.
 - 2. Motor shall be provided with integral moisture detection switch to indicate seal failure.
 - 3. RTDs and moisture switch shall be provided with cable suitable for submerged installation.
- D. Materials of construction:
 - 1. Electric motor shall be of the submersible type suitable for continuous underwater operation. Motor shall conform to the design, construction, and performance of the latest NEMA Motor Standards and have a minimum service factor of 1.15.
 - 2. Motor frame: St52 steel or Engineer-approved equal.

2.3 Submersible Pump Cable

- A. Provide cable of not less than the rating indicated and of appropriate size and construction to meet the service intended. Power cable shall be sized to provide for no more than a 3 percent voltage drop under in-rush loading with across-the-line starting.
- B. Power cable assembly shall be furnished in the proper length to extend from the motor terminals to the terminal points at the motor control center. The power cable assembly design shall include a sealing terminal plug arrangement or other approved method.
- C. Materials of construction:
 - 1. Conductors: Annealed flexible stranded tin coated copper in accordance with ASTM B 172 and ICEA S-75-381.
 - 2. Conductor shielding: Semiconducting layer over the conductor.
 - 3. Grounding conductor: Annealed tin coated copper as per Table 3-21 of ICEA S-75-381.
 - 4. Insulation: Ethylene-propylene rubber (EPR).
 - 5. Jacket: Neoprene, type extra heavy duty in accordance with Paragraph 3.21 of ICEA S-75-3581.

2.4 Column Pipe

- A. Materials of construction:
 - 1. Carbon steel, high strength, with a minimum grade of ASTM A53 Grade B. Yield shall be a minimum of 35,000 pounds per square inch (psi) and tensile

shall be a minimum of 60,000 psi. Heat numbers will be exposed on the pump column matching the Mill Test Reports.

2. Column pipe shall be minimum wall thickness of 0.25 inch. Long couplings having 8 round threads per inch shall be used. Pipe lengths shall be approximately 20 feet to facilitate installation and future well maintenance activities.
 3. Column pipe shall be nominal 6-inch-diameter with total length as indicated on the Drawings.
 4. A carbon steel swage nipple shall be used to connect the column pipe to the pump fitting.
- B. Threading method: Computer numeric controlled (CNC) equipment to ensure consistently precise threads. No oil-based threading coolant will be used in the manufacturing of the column pipe.

2.5 Surface Completion

- A. Sanitary seal: Provide between the surface plate and well casing flange as indicated on the drawings.

2.6 Casing Spacers

- A. Manufacturers:
1. APS, model CI.
 2. Substitutions: Permitted with Engineer's Approval.
- B. Casing spacers:
1. Polyethylene with stainless steel hardware (nuts and bolts) suitable for continuous submergence.
 2. Sized to fit within ½ inch of the inside diameter of the well casing pipe.
 3. NSF-approved.

PART 3 EXECUTION

3.1 Installation

- A. Install the provided pitless adapter complete in place per drawings and in accordance with manufacturer's instructions. Remove and replace the sounding tube and chemical feed lines. Install the discharge line with adequate length to allow connection to future well house.
- B. Install submersible pumps and appurtenances complete in place to provide for a fully functioning domestic municipal supply well. Install pump and motor in accordance with manufacturer's written instructions.
- C. Installation depths shown on the Drawings are subject to revision by the Engineer. Contractor to confirm depths in writing prior to installation of equipment associated with the submersible pump.

- D. Pump Installation:
 - 1. Contractor shall verify that the well casing and screen are free of sediment. If sediment has accumulated, clean by bailing or other Engineer-approved method.
 - 2. Prior to installation of pumping equipment, Contractor to ensure pump outside diameter is at least 2 inches less than the inside diameter of the well casing to the pump installation depth.
- E. Submersible pump cable:
 - 1. Supported on the column pipe by means of cable clamps and stainless steel bands. Cable clamps shall be suitable for continuous submergence and carry an NSF seal if not stainless steel. Place cable clamps every 20 feet, minimum.
 - 2. No submerged splices are allowed except where the cable attaches to the motor terminals.
 - 3. All cable fittings, terminals, and approved splices shall be watertight at the pressure encountered in use.
 - 4. Motor power and protection cables shall be terminated at terminal boxes at the wellhead, and separate cables shall be installed up to the motor control center.
- F. Pump check valve: The pump check valve shall be installed 5 feet above the pump in accordance with manufacture recommendations. The valve shall be a Flomatic model 80DI-VFD, 10-inch diameter or approved equivalent.
- G. Centralizers: Column pipe shall be centralized using the same type and grade of steel as the column pipe. Spring bow latch-on or weld-on type centralizers shall be vertical aligned and placed at 80-foot intervals from ground surface to the total set depth of the pump.
- H. Surface plate: Install per manufacturer's installation instructions and as indicated on the drawings.

3.2 Disinfection

- A. Disinfection of Wells: Per AWWA C654.
- B. Forms of chlorine: Disinfectant used for the wells shall be in liquid form. Solid tablets or powders will not be allowed. A simple chlorine solution will not be satisfactory.
- C. Well chlorination:
 - 1. Water in the well casing shall be treated with chlorine so that an average chlorine residual of 50 mg/L is in the entire volume of water in the well casing. Chlorinated water shall rest in the well casing for at least 12 hours, but no more than 24 hours.
 - 2. Following the rest period, circulate the chlorinated water by pumping, wasting some of the water and returning some to the well, periodically testing for chlorine residual. When zero chlorine residual is measured, continue pumping the well to waste for at least 15 minutes or 10 casing diameters, whichever is greater. The Contractor shall then sample the well for bacteriological evaluation.
 - 3. Testing for chlorine residual shall be performed by the Contractor or his approved testing laboratory.

- D. Bacteriological evaluation: Performed by an approved laboratory for the presence of coliform in accordance with Standard Methods of the Examination of Water and Wastewater. If any of the samples show the presence of coliform, the Contractor shall repeat the process or modify (as approved by Engineer) until testing indicates zero coliform. Repeat disinfecting and testing shall be completed at no additional cost to the Owner.
- E. Contractor responsible for safe disposal of heavily chlorinated water.
- F. Cost for disinfection and testing required by this specification, including alternate pumping equipment if required, shall be incidental to the Work and included in the most applicable bid item.
- G. Contractor to certify in writing that the sampling plan and results of disinfection meet the requirements of the applicable AWWA standards.

3.3 Field Quality Control

- A. Contractor to coordinate field quality control with submersible pump and downhole flow control valve manufacturer's representative for items specified in this section. Manufacturer's representative shall certify installation was completed in accordance with manufacturer's installation instructions and the Contract Documents prior to operation.

PART 4 MEASUREMENT AND PAYMENT

Not used

END OF SECTION